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THE MANAGEMENT OF PRIVATE AFFAIRS

BY

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OXFORD
AT THE CLARENDON PRESS
1908

95-941
10/3/89

HENRY FROWDE, M.A.
PUBLISHER TO THE UNIVERSITY OF OXFORD
LONDON, EDINBURGH
NEW YORK AND TORONTO

PREFACE

WHEN young people set up in life, married or single, they find there are a great many 'ordinary things' which they want to know. They attempt to acquire the necessary information by asking their older friends, and receive answers which are often inaccurate and incomplete. There seems to be no good reason why the correct answers should not be recorded in a book and thus made conveniently accessible to all. The chief difficulty is to make the information elementary enough to be really useful to the ordinary person without experience or special training, but it is hoped that this difficulty has been to some extent surmounted in the present work.

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I

HOUSES

§ 1.—General Considerations.

Rent and Income.—Before a man becomes a householder he asks, 'What am I to spend?' It is sometimes said, and with some reason, that a professional man should spend not more than a tenth of his income on rent, and it is certainly true that the trading, artisan, and labouring classes have to spend in rent of their houses more than one-tenth of their incomes. Generally speaking, the less a man has, the greater proportion of his wealth must he spend in rent. Or, if he own his house, the wealthier he is, the smaller proportion of his total wealth should be sunk in his dwelling. Of course, the circumstances of a man's means or occupation sometimes modify this rule. If the home is also the place of business or is used as a necessary part of his profession, the owner should reckon a part of his rent or of the capital sunk in his home as figuring in the accounts of his business or profession. The schoolmaster who receives pupils into his house and teaches them there, the artist with studio at home, the physician with consulting-room, or the lawyer with offices on the premises,—all these are in a different position from the city man, who uses his home in the suburb for himself to eat and sleep in and for his family to reside in, while the best part of his week of work is spent at the city office, where his business is carried on.[1]

[1] This difference is allowed for in returns for income tax, cf. chap. vii, p. 208.

But having decided how much he intends to spend in rent, or (which amounts to the same thing) how much he means to sink in land, bricks, and mortar, the cautious prudent man will ask some questions about the dwelling.

Rates.—The rateable value of the house, first of all, and the amount of rates in the £ payable should always be ascertained, so that a clear idea from the first is obtained of the sum required for local rates. In some districts houses will be found to be assessed nearer their real value than in others. While in some districts the rates are over ten shillings in the £, in other places they are less than four shillings, though in these days of Education Committees and of sanitary schemes such places are rapidly becoming rare. These amounts, viz. ten shillings in the £ as high-water mark, and four shillings in the £ as low-water, should be borne in mind. Take a small house rated only at £50 a year, and the difference between the high and low level is £15 annually. Many a young married man, and many a good husband who has moved into a better neighbourhood for the sake of his family, has been surprised on the receipt of the first demand note for rates.

Probable Repairs.—Another question to ask is the probability of repairs and renewals being small or great. Even if the landlord promises to place everything in perfect order, and even in the rare event of his promising to maintain everything in perfect condition during a tenancy, there is annoyance, discomfort, delay, expense, and even danger to health in a house which needs constant repairs. If water-pipes are so placed and fitted that they freeze in every frost, or if roofs are so constructed that they leak in every prolonged period of wet weather, or if cellars are so built that they are flooded in every thunder-storm, or if door fastenings, window-sash cords, kitchen range, taps and cisterns, cupboards, bells, and the other fittings to the house have been cheap and unreliable when first put in, and are now worn out or weakened,

the up-keep and renewals constantly necessary are going to be a continual source of worry and expense.

Service Convenience.—Again, many houses will be found to necessitate much more servants' work and much harder domestic service than others. A good housekeeper sees at once whether her housemaids will quickly and cheerfully carry all the water required for bedrooms, and the coals wanted in rooms needing fires, and whether the stairs and window-cleaning are going to be a constant tax or a drain on strength and temper. Especially in this connexion a bright and cheerful kitchen and good servants' quarters generally may be considered of prime importance in a house. Many a cook has left a place where she had good wages and easy work, because of some such reason as that she could see nothing from her kitchen but a blank brick wall a few feet away.

Accessibility.—One more preliminary question should never be forgotten, that of convenience of position. The distance from doctor, post, telegraph, shops, and church should be considered, and the cost of cabs and railway fares carefully weighed.

Aspect.—The individual householder is entitled to his own opinion as to the best aspect for the windows of his different rooms, but he may be recommended not to take a house till he has ascertained exactly how near it comes to his ideal. He should not be satisfied with the vague impressions of the points of the compass he may have on a sunless day; nor with the cheerful representations of the house-agent or owner.

Possible Profits.—A garden which produces more than its owner needs, fields and orchards that may be sublet or farmed for a short time, or for the cut or crop, are an aid towards paying the rent of a house. At times the house itself, though occupied primarily as a home, may be a source of profit to its owner. A house near Ascot, Goodwood, or Henley, can be let furnished for the week of the races for a sum enough to cover several months' rent in its unfurnished state.

A home near the seaside or in a pretty country district may be well let to a family for two or three months in spring, summer, or autumn, and become thus a cheap house to the tenant who occupies for the rest of the year. A chief point to remember by those who let furnished houses is that the trouble of arranging to go out that another family may come in, and the risks attendant thereon, are the same whether the letting is for a week, a month, or longer. The whole place must be cleaned and put in order, wearing apparel and personal effects have to be put away or disposed of, an inventory should be made, and special arrangements about servants undertaken. Consequently a house let furnished for a single week at £20, might well be let at £30 for a month, or £50 for four or five months. The usual rules which hold for the tenancy of a furnished house are that the person who takes it pays and generally brings his indoor servants, also provides the plate and linen and cutlery, but everything else in the house is at his service: he pays on going out for breakages or damage due to carelessness or neglect, but not for wear and tear; outside servants remain at their work, paid by the person who lets the house, though an exception is generally made in the case of coachman and groom. These points should all be remembered when the letting is arranged, and should be stated in writing.

§ 2.—Essential Requirements.

Water Supply.—There is one essential of life, which to all is as requisite as a roof overhead—a sufficient supply of good water. This is now so well understood by all public authorities and the public generally that it is in danger of being taken for granted. Water companies and public bodies are by law, if not by fear of outcry, kept up to the mark to such an extent, that given a supply by main from waterworks under the control of any average board or council, there is generally

much more danger in the cisterns and fittings within than in the source of supply without. Serious outbreaks of typhoid in a locality are at times due to a collecting ground becoming contaminated; but typhoid and other water-borne diseases claim the great majority of their victims amongst those who contract illness from wells or streams, from good water stored in dirty or dangerous cisterns, from water vessels contaminated by careless handling and similar causes. In coming into a new district to live one may think it right to consider the analysis and conditions of the public water-supply; but on moving into a house supplied from its own well or spring it is a duty to get the water analysed by an expert, who should, if there is ground for suspicion, be asked to examine it bacteriologically as well as chemically. This can be arranged either through any medical man or perhaps better through the medical officer of health for the district, whose information and advice are too seldom sought.

Sanitary Work and Appliances.—Apart from the dangers to health from water impure when it reaches the house, there are many possible causes of illness connected with sanitary fittings and planning. In moving into an old house, obtain if possible the plan of the drainage; and if this is recent, the specification or accounts for the last work done on the drains may throw light on hidden or underground dangers. But if these are not obtainable, it is quite safe to conclude that unless thoroughly and recently overhauled the drains outside the house are leaking, and that unless the sanitary fittings are of recent type and in evident perfect condition renewals and possibly a remodelling of the whole sanitary work should be undertaken. The practical results of modern sanitary science may be gathered from a useful little work on 'Plumbing', published by the *Lancet* newspaper, and the illustrated catalogue of a good firm supplying sanitary appliances can be used as a book of reference and instruction. But the principles of modern health are based on having no leak or waste any-

where, as few traps to sinks, drains, lavatories, and baths as possible, and the complete ventilation of all drains and sewer pipes. It follows that every water-closet must have its soil pipe ventilated, that a bath should discharge its waste water without any trap over an open gully; and that inasmuch as nothing is more dangerous in its rapid decay than soapy water and bedroom slops, the provisions for disposal of these need special attention and constant cleanliness.

To guide him in securing a house that shall be and remain sanitary, the householder will do well to remember these rules: money spent on good plumbing and sanitary work is worth paying for and secures good health, while it saves him from illnesses at home; it does not follow because a family has long drunk bad water or breathed sewer gas mixed with their air with apparent impunity, that dangers are not there; for persons may suffer for years from impaired vitality and health due to the bad water drunk or the foul air inhaled, while that no definite ailment has been attributed to these causes may be explained by the evils having grown gradually and the family having become by degrees inured to them; drains, ventilation shafts and inspection chambers should be examined and tested to see that they act properly; gullies and traps should be frequently cleansed; no delay should ever occur in setting right any sanitary defect.

Walls and Roofs.—Good water-supply and proper sanitation have been named as the first essentials of a house, because without them no structure, however sound, will be satisfactory, and because they should be first sought everywhere. The structure of walls and roofs needs equal care, though it is usually more obvious whether this is good work or bad. Some materials used in building are absorbent of wet, certain bricks and sorts of stone being durable and strong so long as they are quite dry; but spongy in texture and with no surface to keep out the wet, whether of damp air or driven rain, they become permeated with

moisture. This is a reason why a house can with advantage be examined during, or soon after, a spell of wet. The action of roof, gutters, rain-water shooting and stack-pipes, and the general dryness of rooms within and freedom from damp places or moist parts without, may then be seen. There should be damp-courses in all walls just above the ground, and special precautions wherever earth or bank outside rises higher than the floor level within. The walls should be of proper thickness, whether they are solid or built with a hollow space. If in exposed positions they should be furnished with a guard against driving rain, such as cemented or battened surface, or pointing between the courses of brick or stone. Roofs should have sufficient steepness of pitch, and be constructed with tiles or slates which lie close and overlap, so that neither rain nor snow will be driven below the surface. Roof valleys and flat parts of the roof, whether of lead, zinc, asphalt, or other material, being a frequent source of trouble, should be of best materials and well-maintained; and here there may be need for special precautions, such as snow rafts, for lead flats. The foundations of walls, chimney-stacks and those portions where the weight and thrust of the building are greatest, should show no signs of subsidence, crack, or damp. The ridges and verges of the roof should be straight and the surface of each side of the roof in a true plane; the walls and ceilings inside should show no sign of damp, especially of no continued or recurrent discoloration. In this last connexion the chill feel of a damp wall when the palm of the hand is placed upon it sometimes tells more than the eye can detect.

Chimneys.—Chimneys are a frequent source of trouble, even in houses otherwise excellent. The rain finds an easy ingress where they and the roof meet. In a windy wet country they become soaked, and if built of absorbent material and without damp-courses the damp creeps down into the plaster of the rooms below. Then, there are all the troubles connected with

smoky chimneys, though these are more often due to the shape and fixing of the grates in the room, to the large or uneven diameter of the chimney's smoke passage, or to the arrangement of roofs and chimneys relatively to trees and surrounding buildings than to the structure of the chimney itself. A chimney that can be well swept, that has a steady and not too straight upward draught, and that serves with sufficient height a good and well-set fire-place should never smoke.

Windows and Doors.—A window being primarily to let in light and to admit or exclude air as desired, it is really more important that the windows of a house should be adequate and convenient for each room than that they should form a regular and pleasing architectural feature on the exterior or should be capable of sealing a room hermetically against draughts. A window not quite air-tight, if so placed that it causes no serious chilling draught, but admits a gentle flow of pure air, contributes to the healthy well-being of the inhabitants. This must not be taken as meaning that draughty windows are more desirable than close-fitting ones, but that a window which keeps out driving rain and emits no chilling cut of icy air on persons in the room should not be condemned merely because it is an unfailing ventilator.

The same remarks apply to the doors of the rooms. The placing and opening of these, as of windows, must be considered, and especially if the living-rooms and bedrooms are small; it may happen that furniture intended for these rooms is incapable of being placed in them owing to the position, height, or width of windows, or the position and opening of doors. A house-seeker with foresight will mark on the floor or on his plan of the room, where beds, dressing-tables, and other pieces may stand. To arrange these things later without putting beds into draughty positions, without doors opening on the wash-stands, or without beds having to be placed close in front of the fire-place, sometimes proves quite a Chinese puzzle.

Staircases.—Staircases are a good test of a well-built and well-planned house. If they are light and easy to ascend, convenient for carrying up and down large and heavy things (such as big beds and wardrobes), a channel of ventilation between hall and rooms upstairs, lighted enough and not apt to get either too close or too cold, the stairs may be the route of many a pleasant journey from part to part of the home, and if stairs and passages are both easy and light, agreeable in temperature and offering pretty glimpses and turns, the daily journeys about the house are a pleasure and restful change.

Floors.—The floors of the various rooms should receive more than passing notice. For the scullery, sometimes also for the kitchen and other offices, tile-floors may be preferred; for sitting-rooms, especially for a couple of feet from the walls, boards with a clean surface, smooth and with no wide spaces between adjoining boards, are required; and everywhere level floors with strong joists must be demanded. The floors on the ground floor, and in particular when the board level is below, the same as, or only slightly above, the outside earth level, must be furnished by air bricks with sufficient ventilation to the outside of the house, if dry rot is to be prevented. Dry rot has proved to many householders a sudden and serious loss of comfort and a great expense.

Lighting.—A minor question from the point of view of health and comfort is that of lighting rooms at night. Electricity is the most cleanly and simple, and is becoming a less costly means of light than it was; the initial cost of wiring a house and fitting up lamps remains very high in comparison with putting in gas. Oil lamps properly maintained have much in their favour and still form the cheapest illuminant we have. Acetylene gas is often very convenient for a country house, or a group of buildings, and is much less costly to instal than electricity. Suffice it here to call attention to a household problem which in country houses is often

a very serious one, and which everywhere means more or less economy or comfort according as arrangements and working are good or otherwise.

Ventilation.—Another essential of a house is ventilation, which has already been dealt with incidentally under the head of windows and doors. The comfort and health of a house depends more than most persons think on the internal air being and remaining fresh and pure. This subject is too complicated and wide for detailed treatment here, but we can always look for windows, doors, and chimneys to let in air from outside, while halls, stairs, and corridors should provide an internal reservoir of fresh air within, where in cold weather the atmosphere may have the chill taken off it before it reaches the rooms. To secure ventilation without draughts nothing is so effective as windows that open close to the ceiling of the room, and a high sash window opening at the top has in this respect advantages over any other; low casement windows, in recent years so often preferred for their picturesque features, are in this respect inferior.

Heating.—Closely connected with ventilation is the last essential of a house to be treated under this section, viz. means of heating in cold weather, which in our English climate must be taken as seven months out of the twelve. Many a house seen and taken in summer when it looks, and perhaps is, charming becomes intolerable in winter cold. Of course bright open fires are more cheerful and give fresher currents of air through the room than any other form of heating; but fires are more costly, much more wasteful of fuel and cost more in servants' labour than any other sort of warming system; moreover, they are never able to warm a large room equally, and they are more dangerous in causing conflagrations than either closed stoves or hot-water or hot-air systems. Closed stoves of various makes, burning coal, coke, or anthracite are now obtained in very tasteful forms, and of all sizes, and some of the slow-combustion stoves are

specially suited to halls and corridors. But undoubtedly the most perfect, simple, and economical method of keeping a whole house warm during the winter is by hot-water pipes with radiators. The initial cost is sometimes heavy, unless the whole system is installed when the house is built, or unless an old house adapts itself exceptionally well to such a process; but few of those who have lived in a house well heated by hot-water pipes can live without them afterwards without a sense of greatly diminished comfort. The fixing and arranging of hot-water heating should be entrusted to an expert, or at least some firm who understand how to determine the position and size of the radiators in each room, taking into consideration the aspect and size of the windows, the directions of the usual ventilating air-currents, the cubic capacity of the rooms, and the amount of outside wall. These things being satisfactorily met, the furnace being of sufficient size, and its firing and regulation being attended to by a competent and intelligent servant, a large house can be heated throughout with less labour, no dust and dirt and cinder-removing, and far less expense than a few rooms can be warmed intermittently by means of open fires. General hot-water heating, with small bright open fires in the living rooms, produces a result with which no one need feel any dissatisfaction.

So far what has been said has concerned all kinds of residences; the different conditions of town and country dwellings need treatment under the next two sections, which deal respectively with town and country houses.

§ 3.—The Town House.

The town house, which for practical purposes must be held to include the suburban 'villa', is for the practical purposes which are here under review such a dwelling as from its proximity to other dwellings, and owing to the restrictions of space and law incident to an urban society, is necessarily

more closely bound by many ties to the surrounding district than a house in the country.

Situation.—Position is one of these conditions. In the town one has to consider how far the next-door house takes one's light and sun and fresh air; whether the people living only separated from one by a few inches of party-wall will be pleasant and quiet neighbours. The amount of night traffic in the thoroughfare, only a few yards from one's pillow, becomes an important consideration. The probable amount of inevitable dust in summer and of smoke, fog, and soot carried by the air in winter needs careful thought.

Public Services.—Another set of considerations is the quality and quantity of the public services which are now increasingly provided by our borough and urban district councils in return for the rates. The average British householder grumbles at the steady increase of his rates, but he really is at heart grateful for the system of sewers and refuse disposal which leave him nothing to do but keep his house inside clean and his drains free from leak or stoppage, for the streets with pavement and asphalt which allow him to walk dry and clean in almost all weathers, for the control exercised over the cabs he hires, for the police who protect him day and night, for measures checking the spread of disease which might threaten his family, for the inspectors who check the creation of nuisances, and for many other public services which a dweller in the country neither asks nor expects. The householder in town pays for these services; he should see that he gets them by knowing to what officials he should appeal if he notes any irregularity and to what office he should send when he has any complaint or request to submit.

On the other hand, the regulations under which most town dwellers live have to be observed. The householder must keep his house in sanitary repair and his water-taps must not leak; or some day an inspector will call and possibly

trouble may follow. He must not add a bow window or a porch to the front of his house, or a conservatory or lean-to bicycle shed to the rear without the leave of the public authority; and probably without also complying with very stringent building regulations. Diseases that occur in his house must be notified. If a chimney catches fire he may be fined. If he keeps poultry or other animals in his back-yard he may be infringing the rights of neighbours or the rules of authorities. In many directions, he is subject to restrictions and by-laws. One of the liabilities of this nature that may prove an unexpected and very serious strain on him must be noted, viz. the obligation to remodel the drainage of his house, which may fall on the owner or on a tenant who holds under a repairing lease. In some cases the powers of the local council are so great, and the standard of sanitation demanded is so high, that an expense of a hundred pounds, quite unforeseen when he bought or took his house, may be suddenly imposed.

Liabilities, e.g. to make up the Road.—The liabilities of all owners of property are at least potentially serious. But in town and suburban districts they are especially so. One liability which a man who takes a house in the outskirts of a town may learn too late or to his cost, is the liability to make up the road fronting on his property to the satisfaction of the council, if, as is often the case, the thoroughfare on which his dwelling fronts has not been formally taken over by the highway authority. The formalities and procedure in connexion with the making up of roads are based on the principles that the road, when taken over, shall be thoroughly well made and not likely to be an undue burden on the public rates, and that the owner or holder who has to pay the cost of its being made up to the specification and satisfaction of the Council shall pay for what actually fronts his property and no more.

Yet other liabilities may be named. Maintenance to adjoin-

ing property and the right known as ancient lights are a mine of wealth to town surveyors and lawyers. Whether one is altering a party wall or excavating for new foundations or cellars, the right to one's own property cannot be so exercised as to diminish the rights of a neighbour in his. This principle of the English Common Law has applications which are obvious but which, like many plain things, have been pursued by lawyers till they lead into a maze of subtle refinements.

Flats.—The tendency of recent years, especially in London, has been to increase the number of residences which are suites of rooms in a large block, and to substitute the 'flat' for the small house. Flats have obvious disadvantages, such as the sharing of a street door and a staircase with others, the impossibility of having a garden or even a back-yard; the close proximity to other persons, and necessity to conform to rules restricting liberty. On the other hand, there are advantages; the reduction of the duties of servants, the ease with which expenditure can be foreseen and limited, the rates being paid by the landlord and external repairs undertaken by him, the readiness of landlords to let for a shorter period than they accept for a house, and the ease with which the dwelling may be left with no one at home for hours, days, or weeks, and generally the adaptability of flats to the pleasures and engagements of town life.

§ 4.—The Country House.

There are certain obvious differences in design and arrangement between town and country houses. In the town house, more stories have to be raised on the ground built on; light is more to be thought of than view, so that windows are often most satisfactory when they exclude the view; front-doors and floor levels are best when they most cut the inside off from the outside and raise the rooms from the contact of the street outside the house. Hence an architect with a success-

ful record and large experience in town buildings may fail conspicuously in making a country home. Good building, rules of construction, and sanitary precaution hold everywhere, but the conditions of town and country life, so essentially different, need to be recognized in the house.

Country Life.—The country house has the special advantages and disadvantages of being remote from other buildings or centres of population. It must, therefore, be more self-sufficient in its economy than the house in town. Since the butcher and fishmonger seldom or never call, the larder must be kept well stocked. There is no greengrocer at hand, so the garden must supply vegetables all the year round. The milkman does not leave the can on the door-step before any one is about, so a cow must be kept, or a boy must bring milk from a farm. Water is seldom laid on from the main of a public company or council, and is rarely supplied by private pipe, so it has to be pumped or drawn daily, while constant care must preserve the well or spring from contamination. No sewers and dust-cart remove the waste ashes and refuse of the house, and these have to be disposed on, or under, the ground by the householder himself. Shops and post, doctors and railways, are perhaps very distant ; and so it is needful to keep one or more vehicles, which means stable and horses, or motor-car, cycles, and other means of communication and carriage. In fact, though life may be thought to be possible on simpler lines in the country than in the town, yet the householder has many things to do or to get done for himself, unless indeed he intends to see little of the world around him, and to entertain no friends within his home. Even with this intention he must do, or pay to have done, much which others would do without definite payment if he lived in the town.

The man who chooses a country house has to learn what Hamerton described as ' the lesson, which nobody does learn except from actual experience, that a too distant retirement from the conveniences of civilized life, far from being favour-

able to projects of economy (as the inhabitants of large towns sometimes imagine), is on the contrary a cause of incessant expenditure, as unsatisfactory as it is unavoidable, unless, indeed, you choose to submit to the privations of a Highland shepherd, and live upon oatmeal and diseased meat'.

Residential Districts.—These remarks only apply in a very limited extent to many country districts, those which are known to the house-agents as 'desirable residential neighbourhoods'. Here the close proximity of a number of houses, larger or smaller, which are the homes of people whose living and life does not actually depend on the tilling of the soil or the occupation, agricultural or industrial, of the country-side, creates frequently a supply of the conveniences of town life with the advantages of country air and surroundings. Such residential districts are of course more or less the town spread thin over the country. They are often extended suburbs, and they vary greatly in their comparative expensiveness, their seclusion, and their approach to really rural characteristics.

The Garden. - In one point there is a strong division between the town and country home, which is really the best mark of difference to discriminate them. The importance of the garden is this test, and the larger part the garden plays in the essential domestic economy of the household the more truly is the house a country dwelling. The townsman may have a garden, even a garden of some size, with greenhouses and vineries, but he is always regarding it as an extension of his drawing-room, a place for luxury, society, and amusement. Removed into a really country district, he must regard his garden as far more than this: it must supply him with much of the household food, it is no longer an extra refinement of his daily life, but the country-side in which he lives brought into touch with his front windows and especially with his back-door. The gardener is not only a man who keeps the living-rooms

supplied with plants and flowers, and sees that the immediate approach to the front-door is orderly and attractive with grass-plot and shrubs, he must see to many things which tradesmen or public servants manage for the urban household. The poultry-yard is an annexe under his care ; the farmery and the milk supply are under his supervision, even if he is not personally responsible for all its labour and results ; the stable and other necessary outside duties, pumping of water, disposal of dust, ashes, and refuse fall to him to attend to, or to some other outdoor man-servant, whose work and duties are usually organized under the gardener's authority.

This is not the place to discuss the pleasures and profitableness of gardens, the keeping and breeding of poultry, the management of small holdings, and the rules for stables—subjects on which so much has been so well written—but the question of taking a country house must be clearly seen to be complicated by a number of considerations in which town-dwellers are inexperienced.

Importance of Surroundings. — Country houses will be always sought by those who for some reason desire a country life. And to such these questions of the home arise : Is the garden in good order ? Will it cost much or little to maintain to your liking ? Are the inevitable out-buildings sufficient, in good repair, and conveniently arranged ? Are the house, its surroundings, and the neighbourhood such as to afford the required opportunities, whether for entertaining friends, giving recreation or occupation, providing sport or social intercourse ? Is there suitable dwelling accommodation at hand for such outside servants as must be kept regularly or employed occasionally ?

Participation in Rural Duties.—Many men will live in the country in order to find occupations, especially open-air occupations, which they cannot pursue in the town. Such, having time and means at their command, will frequently themselves attend to duties which others will place upon

servants. Even in such cases the owner does not want to be bound to be always at home, and must have some one on whom he can occasionally throw his self-imposed duties. On the other hand, too complete reliance on a servant, however steady and skilled, has its drawbacks. One of the pleasures of a country-side is the understanding and occasional sharing in, and the general supervision and direction of, the out-of-door life around the house : to share in outdoor work on your own land or holding brings health and appetite, stimulates the men working for and with you, and gives you a practical knowledge of men and things which is the salt of an intelligent country life. There are sports and pastimes, hunting, shooting, and fishing, to which must now be added motoring, which are the peculiar distinctive pride and pleasure of the country gentleman. He may gain as much healthy recreation, as much relief from nervous or intellectual strain, as much sense of belonging to the country-side if he helps to plant his roses, prune his fruit-trees, lay a land-drain, fell an oak, drive his hay-cutter, build his wheat-stack, burn his weeds or hedge-trimmings, or work in his rick-yard with the thrashing-machine. Or if he has not time, strength, or inclination to do any of these things, he ought to know something of each process. This insistence on what lies outside the house is not really leading too far from our subject of the country house, if it makes clear enough this fact, that the country house, however well built, convenient internally, or otherwise suitable in itself, should not be taken without considering the immediate surroundings and the locality much more and in a different way than when a town house is taken.

Out-buildings.—It will thus be seen how very important the out-buildings are in the country house. The stabling must be sufficient and neither too near nor too far away from the house. If too far off, it will have to be connected with a telephone or at least an electric bell. The sheds should include two which are sometimes lacking in country houses. One,

a room or covered place in which such outdoor servants as are regularly employed may be occupied advantageously in wet or hard weather. Such occupations include the mending of tools and nets, the sawing or chopping of timber, pricking out, and other horticultural processes. The other is the coal or fuel shed, to have which of ample size is always an economy and convenience in the country.

Roads.—Some districts have roads which are simply impassable for foot passengers in the winter, and either the poverty of the district, the negligence of the local councils, or the absence of suitable road-making materials may account for what comes sooner or later as a very unpleasant discovery. This subject may be followed within the coach-gate, and whether the drives, paths, and field roads on your place are properly metalled, and what it will cost to metal them properly—these are also questions to be asked in good time.

Finally, on the question to take or not to take a country house, remember that life in the country has its essentials different from those of town life; here we are more dependent on ourselves, the surroundings and belongings of our home, the support of servants, the friendliness of the near neighbours, and much more dependent on the weather and the season of the year than we are in town.

§ 5.—Internal Features.

A house needs both furniture and cleanliness, order and management, if it is to be not a mere shelter, but a home. And inasmuch as the expense and comfort of the house depends so greatly on these things, at least a few rules on these points may be given.

Decoration.—When a house is rented there are certain things to do before one moves in. Supposing that structural and sanitary repair are achieved, there is the decoration of the rooms to consider. On decorations very little may be

spent and yet every necessary object may be obtained. Or very much may be spent and little appear to the unpractised eye. Wall-papers vary as much in prices as in patterns. Papers as good as any one can want for any rooms can be got for 3*s.* 6*d.* a piece, and as 12 yards go to the piece this means 3½*d.* a yard. The gorgeous gilt leather-like papers which adorn hotels and restaurants cost perhaps twenty times as much. The walls of a room liable to much dust and damage should be cheaply but frequently papered, and this will cost less than a single costly papering. And similarly with internal work, which should be done at least once in every seven or eight years; as carried out by certain firms, according to the most costly architect's specification, the outlay may be twice or three times as heavy as when done simply with two or three coats of oils and one of varnish by the ordinary decorator. The difference between the two is accounted for by the high rate paid to specially skilled men, to the number of coats of paint put on, and the number of times these are rubbed off and smoothed down before the final coat is reached. A plea needs to be put in for simple and moderate style in decoration of walls and ceilings and internal woodwork, accompanied by frequent renewals of anything dirty or worn. Ceilings, especially, should be white-washed every two years, or if the rooms are much used every year.

Furniture.—The rule should be that whichever pieces of furniture one uses most and sees oftenest should be the best in construction and style. It is of course quite right to have decent things like drawers and tables in your guest-rooms; but by all means let the chest of drawers which you will use every day open and shut easily, let the table you sit at several times a day be steady and sound, let the chairs on which you rest at your daily meals be firm and easily moved. It is no economy to get poor furniture if it is to have constant hard use. If a man can afford any good pieces in his house, they

should be those which get the most wear, and which by their close and hourly connexion with his life can give him comfort and pleasure rather than worry and trouble.

The accumulation of useless articles found in many houses suggests here one obvious lesson, that a good big box-room or lumber-loft is often a necessity. But why have useless things? When a thing is really no longer of service it should be decently put away. Decent burial is not always accomplished by sending to the lumber-loft, but is more truly performed by giving away or even selling to a dealer.

Domestic Service.—All these internal features of the house gain a great deal of importance from the consideration, which always ought to be shown, and increasingly must be shown, to the life and work of the servants. Whatever helps the household work, what causes less labour for more result, whatever makes domestic service and duties easier and pleasanter—such things are not only to be preferred, but are becoming absolutely essentials of the modern house. The domestic service problem as it is affected by suitable quarters, and drudgery-saving arrangements, has already been touched upon. It is only right here to add that the householder has many difficulties to face, some pitfalls to avoid, and some obstacles to circumvent. In dealing with servants he will need courage, tact, and carefulness. In this respect let him be guided by these rules, that the female domestic servant is more educated than she was a generation ago and has far more choice of opening and work, and so she should have at least as much patience shown her, as much freedom allowed her, and as much consideration paid her as she would get in the other employments open to her; if she fails to get these in any house she will go elsewhere.

Cleanliness.—An old-fashioned lady, who had seen a great deal of life and had known how to manage a large house, used to say 'I can always tell if a house is well-managed and has good servants. I look to see whether there is dust

under the beds and on top of the wardrobe.' Here was a bit of domestic philosophy that really meant a good deal. Good service and cleanliness are of more value than a grand building or costly decorations and furniture. To have the latter without the former is not only a sort of impropriety, it is a misunderstanding of the meaning of health and home. It is more and more becoming a law of scientific sanitation, and not merely a rule of the housewife that cleanliness is next to godliness. So choose a house that is clean, that can be kept clean, and have furniture, fittings, and everything so ordered that cleanliness can be maintained.

When Queen Alexandra went to visit the workmen's dwellings of the London County Council, she said that she had one suggestion to make,—more cupboards. This showed real and sympathetic insight. For cleanliness and comfort in the house can only be attained by having a place for everything and keeping everything in its right place. Hence the need for cupboards, and it may be said that if you have no place to keep anything properly, you may as well be without it.

It is sometimes said that there is a decay of home life, and that family ties are not as strong and permanent as they used to be. If in some cases they are less than they should be, it is because the home does not attract and satisfy by personal and individual interests. Our houses are too much built in rows or to prescribed models and on too familiar lines; they are furnished too much by the universal provider; they are decorated and established, maintained and managed too much on formal lines, with too little of the individual touch of the person about. Let a man care for everything about his house, let him know all about the structure and the fittings, the maintenance and the domestic economy of his home, and he will find that time and thought thus laid out on his house are repaid by a healthier and happier existence.

§ 6.—Renting a House.

The majority of English householders are not owners but tenants of their homes, and pay a rent for them. In the periods and conditions of their tenancies the various classes and districts of English society afford many differences. While the labourer is usually a weekly tenant, free to depart elsewhere or liable to be told to go at a week's notice, the wealthiest inhabit homes they own, which in many cases are ancestral dwellings. But the average man of culture and some means takes his house at a rent either on a yearly tenancy, or on a three years' agreement, or on a lease for a longer period. These are the three forms of tenancy recognized by our law and practice, and mostly used by those likely to read this volume.

Yearly Tenancy.—A yearly tenancy is the normal tenancy of English law. Hence, failing evidence that his tenancy is of some other character, a yearly tenancy is presumed in the case of any man paying rent to a landlord. Here the rent is payable once a year, unless otherwise agreed. Six months' notice to quit must be given, whether by landlord or tenant, at least half a year before the expiration of the current year of the tenancy. As a consequence the tenant leaves on the quarter-day on which he entered, and if no notice to quit be given at the end of the first half-year during which he has had possession, he has the right to stay two full years and the obligation to pay rent for that period. 'Generally a tenant from year to year is answerable for keeping the premises in fair repair, but not for ordinary wear and tear, nor if they be burnt down.' This is a rule of law regulating what is expected from a tenant, but there is none imposing anything on a landlord in the case of a yearly tenancy. The tenant as occupier is liable for the rates, but it is often agreed in cases where a house is let furnished for a year that the landlord pays these outgoings. In some cases the custom of the country will govern the practice followed, e. g. when the landlord does

outside repairs and the tenant does inside repairs, as is common in some districts, or as in others, where the landlord pays for materials used and the tenant pays or provides the labour. But the questions of liability for repairs and the amount necessary to be done to satisfy just requirements form a constant ground of difference between landlord and tenant, unless the matter is clearly stated and agreed upon in writing between the parties.

Three Years' Agreement.—An agreement to let a house for three years is a very common basis of tenancy, partly because it is so frequently a natural and convenient arrangement, and partly because three years is the longest period for which our law holds a written agreement made not under seal to be sufficient. In such cases the general practice is for the landlord to do the repairs and to put all in order when the tenancy begins, but frequently a covenant binds the tenant to make good at the end of his tenancy or to pay then a stated sum towards renewing the premises. Here may be stated a rule which those taking houses should not ignore, viz. that in the relations of landlord and tenant, the landlord in letting a house or property implicitly covenants only that the tenant shall have quiet occupation, and, unless bound by some written undertaking, he makes no promise to which he may be held that the premises are sanitary or tenantable for the purpose of the tenant, while on the other hand the tenant in taking a house implicitly covenants to commit no act of waste and to maintain in fair repair. But in all cases of letting and hiring houses the custom of the district, the conditions of the class of property taken, and the covenants and special arrangements made and imposed by the lawyers who are generally called in to settle the relations of landlord and tenant in a legal form produce varying results.

Lease for Years.—Where the period of occupation contemplated is for a longer time, and when alterations or additions, or a large expenditure in any way is connected with

the house to be rented, a lease for a term of years will generally be made. Two essential elements of the lease may be noted, first that it must be embodied in a document under seal, with the result that, if modified in any respect later by agreement between landlord and tenant, that modification or alteration should also be embodied in a document under seal, a written document merely signed by one or both the parties not being sufficient to alter the lease which is under seal; this is a legal pitfall into which tenants not infrequently fall. The second essential of a lease is that the term or period must be definite and clear. It may be made in the form of alternatives, as when a man takes a house for seven, fourteen, or twenty-one years, and it may include the option to tenant or landlord or both to terminate the tenancy at certain points, e.g. at the end of the third or fifth years, but the essence of a lease is that it is for a fixed period or term. With houses taken on lease it is generally usual for the tenant to bind himself to repair the premises, to maintain everything in a proper manner, and to reinstate when he leaves. The so-called repairing lease, so dreaded by nervous occupiers, and too often a cause of great expense and unexpected loss on either side, is really based on common sense and fairness. The tenant who has a considerable number of years in which to inhabit a house may let it greatly deteriorate in structure, cleanliness, and repair, or he may by care and constant attention keep it always in a good and desirable condition. It is objectionable, if not impracticable, to expect a landlord to be always coming in to see that the place is in order or to demand that he should at once reinstate everything that goes wrong, though it be a small matter due to the fault or neglect of the tenant. A man, therefore, who takes a house on lease, will expect to have to do repairs and to leave the place in good order when he departs, but he will also take all due care that the covenants of this nature which he undertakes, shall be equitable and not so worded as to

impose on him any unfair or excessive expenditure. It is well to remember that a householder may easily become a yearly tenant without knowing it, as, for instance, if he holds on after the term of his lease is up, when, if no arrangement has been made for this event, he ceases to be under the conditions of his lease and becomes a tenant from year to year.

Covenants in Leases.—Some caution may here be given in regard to the numerous and varied conditions which are inserted in leases and agreements to let houses. These, whether suggested and inserted for the benefit of landlord or tenant, form a fruitful source of negotiation and delay before the final result is reached, and they sometimes lead to worry and troublesome differences when they come to be acted upon. The tenant is often asked to bind himself to use the house only as a residence and not as a place of business, to exhibit no notice or board except with the landlord's leave, to abstain from keeping cocks and hens or from hanging clothes out to dry, to allow the landlord and his workmen to come in during daylight hours to examine and execute work, to permit a notice-board to be erected during the last months of his tenancy and to give facilities for prospective succeeding tenants to view the premises, to be responsible for all taxes and charges in the nature of a tax except landlord's property tax (Income Tax, Schedule A), to paint inside and outside all iron or woodwork previously painted at fixed periods, and so forth. Needless to say, the exact wording of such clauses in the lease and the probable cost of them must be weighed beforehand ; and generally it is well to settle these points with a surveyor employed for the purpose of safeguarding the tenant's interests, rather than to leave them to a house-agent or to any person who is principally the landlord's representative, and must be expected to work primarily in his interest. There are three subjects for covenants to which special care should be given : first, the repairing covenant under which the tenant will reinstate after his term is over, which might be so

drawn as to necessitate almost complete rebuilding or might leave the tenant at the arbitrary will of the landlord ; secondly, the covenant by which the tenant insures against fire, in connexion with which it is well to insure also against the possible loss to a tenant who may find that he has to go on paying rent for a house which has been burnt down as well as for another house ; thirdly, the covenant regulating the tenant's power to assign or sublet his house with the consent of the landlord, which should specially provide that the landlord may not withhold his consent save on reasonable grounds to be stated in writing. Suppose a surveyor or a practised solicitor is engaged to settle these covenants in the tenant's interest, he will soon find subjects to put forward in his client's favour, such as that in case the house is burnt down, the tenant shall not pay rent till it is rebuilt, or that the landlord guarantees a good and sufficient water-supply, or will always provide sound drains and sufficiency of sanitation.

Fixtures.—Lastly, there is the question of the fixtures in a house, a point on which clearness cannot be too much insisted on. The landlord's fixtures are those which are originally fixed by him and are necessary to the building, such as fire-places, ranges, pipes and the carpentry and joinery, cupboards, shelves and the like, which are in fact part of the house. An in-going tenant should make a list or inventory of such fixtures and it should be approved by the landlord. Then, having entered into occupation, he will proceed to add to these fixtures such things as will be tenant's fixtures, gas-brackets or electric light fittings, blinds and rails, curtain-rods and such other things as, though fixed to the house walls, floors, or roof by screws or nails, yet remain his property, which he is free to remove when he leaves. In removing them he must be careful not to leave things in any less sound or presentable condition than they were when he entered. From this account it will of course be evident

that no line can in the nature of things be drawn between the fixtures of the landlord and the tenant; and, in fact, it may occur that a tenant not liking the dining-room fire-place or the kitchen range may remove the one or the other, and put in another range or fire-place more to his liking; when he goes out he may put back the old range or fire-place, and so, leaving the landlord's fixture replaced, take away his own. Of course, the usual experience of tenants is rather the reverse of this, for the tenant will usually put in blinds, curtain-rods and other fixtures, which will be of no service to him when he moves into another house. If he has not settled with the new tenant before the expiration of his own tenancy, he should make his list of such things, give a copy to the landlord, and get the landlord's consent for the things to remain for the succeeding tenant to take at a valuation or for a fixed sum, if he so chooses. Without such consent he will have no power to go in and remove them if the new tenant refuses to pay. With fixtures, as with covenants, the right line to take is to trust only to written documents, and to be guided by caution, not carried away by vague hopes.

§ 7.—Buying a House.

Value.—There are always men who will prefer to buy and own their own homes rather than to rent houses. Such conditions as are found in certain parts of France, where 80 per cent. of the householders dwell in houses they own, are of course rare, and can only be looked for in settled and unchanging localities. But there are often circumstances in a case which make a purchase advisable; as for instance, when a man wants to have security of tenure, or freedom to alter or add to his house, or needs a special style of dwelling. The first advice to give a man inclined to buy what he has seen and thinks might suit him, is to wait and reconsider it. The advice and urging of the house-agent, the natural eagerness to possess one's own home, the counting up of advantages and

pleasant possibilities before disadvantages are perceived, and unpleasant aspects are discovered,—these are temptations to buy in haste. The questions that have been asked in the first section of this article, the questions before taking a house, must be asked before buying one. And some new ones also. For it is not enough that the house is well built and convenient in size and position, and generally suitable, but further it should be asked: Is it a good investment? At the price asked is it likely to be of the same or of less value in a few years' time? These questions may need expert valuers to decide. But one question any man can ask for himself: What is its annual value? Suppose he has to sell stocks that bring him an income of £50 a year in order to buy his house, it means that he will be paying £50 a year (in the form of diminished income) to live in his own place. Now is the place when bought worth £50 a year? In other words, would £50 be a fair rent for it? This £50 a year being the annual value, the place is being bought at twenty years' purchase, since £50 paid yearly for twenty years amounts to £1,000, if £1,000 is given for it. A higher rate of purchase than this should only be given when special reasons justify it, as when there is a prospective increase of value within sight, or when the property is undeveloped and may at small expense be made much more desirable, or where some special or personal reason comes in. In comparing house property with investments in stocks and shares, the deductions from income caused by insurance, repairs, non-payment of rent by insolvent tenants, and cessation of rent during periods when the house is unlet, must all be remembered. Here, again, the prospective purchaser may well consult an expert surveyor, looking out for some one not connected by any social or other ties with the vendor's agent. In recommending recourse to a professional land-agent, it must be admitted, of course, that this means the payment of a professional man's fee, which in cases of purchase comes out

often at a large sum for what appears very little trouble. Still, an expert will, if he can be relied on to give full and fair attention to the business in hand, point out advantages or defects which others would overlook; he will see further ahead than the purchaser, he knows what land and houses fetch generally, and he should be able to find out what they fetch in any particular locality; and again, if the negotiations are entrusted to him, he should save in the reduction of the price more than the amount which has to be paid him for his services. A buyer of house property is always tempted to give too much for his first purchase.

Freehold and Leasehold.—'Buying a house,' in ordinary conversation, may mean either buying the house and its site out-and-out—'freehold'—or buying the right to enjoy them for a limited period subject to the payment of a rent (usually called a 'ground-rent', because connected with the original letting of the ground for building) or other obligations—'leasehold'. Where leasehold property, more properly spoken of as the lease of property, is bought, the purchaser must, of course, consider the difference between the ground-rent he will have to pay and the full annual value as the subject of his purchase, and remember that this is not a perpetual income, but an annuity terminating at the end of the lease. Tables giving the actuarial value of such annuities will be found in almanacks and elsewhere under the heading of 'Present value of a lease or annuity'. Very serious consideration must also be given to the covenants of the lease, which often prevent the tenant from even improving the property without the landlord's consent, and therefore involve a new bargain, possibly accompanied by increased ground-rent, when alterations or additions are made to the building. Further, it must be remembered that at the end of the lease there will be a claim by the landlord for dilapidations, and that this claim will not be barred by the fact that he intends to demolish the building or relet to the tenant.

Contract to buy.—Now suppose a decision to purchase a house which has been seen and approved has been taken, and suppose the vendor has agreed to take a sum which the buyer is willing to give, it is usually in the interest of one or both, that the contract for sale should only be entered on when it has been approved by the solicitors on either side. For firstly, an open contract to sell and to buy means very often more than the vendor can give or the purchaser wants; the so-called 'open contract' means the promise of a perfect legal title such as is in most cases impossible to obtain. But further, the lawyers on each side should arrange the contract before it is entered upon, because so many things beyond the mere ownership are involved, and these are essentially subjects for negotiations, arrangement and account. The payment of a deposit, the fixing of date for completion, the giving of possession, the apportionment of rates, taxes, rents, and insurance premium, and so forth, all these have to be considered in the purchase and sale of houses, and make the services of the solicitor almost imperative.

§ 8.—Building a House.

A house may be acquired in two ways, either by buying one already built, or by building one. As a rule it may be said that it is easier to get just what one wants by building, and cheaper to get what can be made to suit by buying a house already built. Indeed, so usually is the building of one's own house an expensive undertaking that the saying goes, 'The fool builds, and then the wise man comes along and buys his house.' It is easy to see why building for himself is found by almost everybody to be expensive. A man thinks he builds for his life, and so may indulge his peculiar fancies, and he puts into the house things that others will not require or care for, and, especially if he is a man of taste and ideas, he will give play to artistic embellishment or personal luxury, and so erect a building that has features

that do not correspond with any commercial value in the market.

Possible Gains in building.—There may be, on the other hand, conditions which may make the house which a man builds a good investment from a merely commercial point of view. If he build far from a railway and a line is subsequently brought near him, or if he builds in a district rapidly coming into public favour, or if he builds when slackness of work in the building trade and low prices of building materials unite to obtain a low price from the builder, or when he builds a house of the size, arrangement, and character that will prove convenient to others beside himself, and especially to others who will seek homes in the locality, a man will often succeed in building a house, and after living in it for some years sell it for more than it has cost him to produce. But such fortune does not fall to the lot of all who build. Such conditions are the exception, not the rule.

Leasehold Site.—Before a house can be built, however, there is the site to secure. And the land required need not always be bought outright. The practice of building on ground leased for a long term of years, 99 years or 999 years at a fixed rent, is common in many places and especially favoured by landlords of urban and suburban estates, who thus find an easy and systematic means of disposing of their land to builders and others, who have money to build, but not to buy a freehold. For the man who intends to build on leased land caution at the outset must be advised, lest the full liabilities he incurs are only realized too late. He may be called on to make up new roads, which the highway authority will of course insist on having as broad and as solid as possible; armed with their compulsory powers, the district council may impose an alarming charge on the man with a frontage to the new road that has to be made up and taken over. Then the advent of sewers and a drainage scheme, or of water-supply, or liabilities to fence the land in a certain

manner, all these are frequently found incidental to land let on long lease.

Freehold Site.—These considerations apply to a certain extent to the purchase of a freehold site for a house. In a lease the ground landlord covenants for powers to compel the lessee to carry out certain obligations. With a freehold site, similar obligations may be imposed in the terms of purchase.

Architects.—In choosing an architect to design the house you are to build, remember first that your architect is (or ought to be) an artist as well as a practical man. He must be allowed some of the freedom which all artists demand. So do not expect any architect to make just the house you want in design, cost, and artistic features. See what work he has done, and hear what others who have employed him say of him before you engage him. Find out whether he has time to give patient and personal attention to you and your work, or that, if he has not, he will superintend by capable and sympathetic assistants. Many have gone to eminent architects of great fame and ability only to find themselves disappointed in this respect. Further, see that your architect has a sense of economy and control of the builder, and be sure to understand beforehand the terms on which he is working for you. Also, see that he furnishes you with copies of all plans and that you keep all plans that are used, not omitting the builder's working plans; for you do not know how useful these may prove hereafter; if alterations are needed or additions have to be made or repairs done, the plans are invaluable. This is especially important with things hidden away like drains beneath the ground.

Builders.—The choice of a builder is as important and often more difficult than the choice of an architect. If the job is given to a builder according to estimate and tender, the choice will usually settle itself by the lowest offer being accepted. But it is wise only to allow those building firms to tender who are known to be reliable and to have sufficient

plant and capital, and whose reputation as testified to by the experience of others is beyond doubt. Builders as a class come in, it is to be admitted, for much abuse and unjust condemnation. In an age which worships cheapness, and where competition reigns supreme, the temptation to do work that will serve but will not endure, is excessive. And similarly the British working-man who works for the builder comes in for much abuse, sometimes perhaps deserved but very often unjust. Do not expect a builder to send his very best man to do everything you want at a moment's notice and to finish in an hour's time. But trust to steady work and proper pay, and especially employ those who by experience and long service show themselves capable and trustworthy.

In the choice of a builder, as well as in such technical matters as the recourse to a quantity surveyor or employment of a clerk of works, the architect must have great weight with his client. But too much should not be left to him, unless of course the man whose house is being built has no desire to limit either expenditure or the free inclinations and ideas of the architect. One source of needless or unexpected expense may be noted in the choice of materials. A brick house in countries where bricks are made and got sound and cheap without heavy cost of freight is the cheapest and best house to build. Where roofing-tiles are the most usual covering of the houses, because they are made in the district, it is an affectation or an extravagance to insist on having Colly Weston slates or Horsham flags on the roof. To use the best materials and the traditions of the county or district in which you build is true economy and good taste.

Cubic Measure of the House.—The man who builds his house should remember, especially in accepting the plans or determining the design and style of the building, that a square house gives more room and light than a long oblong or any irregular shape, assuming of course that the same amount of materials is put into walls and roofs of each. The cube is

the simplest and cheapest form, and the greater the variation from this the greater the cost for the result achieved. Site, aspect, and slope of ground of course often compel the shape and ground plan of the house to be irregular or unusual, as they often compel the front of the house to face the North or West, though every one knows that in our climate South and East are better directions for the chief side of a dwelling to face. These remarks explain why it is always interesting to calculate the total cubic capacity of the house to be bought or built and to find the ratio of cost of building to each cubic foot. The cheapest buildings, such as many of the cheap cottages at the Garden City Exhibition at Letchworth in the summer of 1905, may be built at 4*d.* per cubic foot (or even less); but the ordinary style of building thought necessary for most gentlemen's houses would be considered economical if built at 8*d.* per cubic foot; and good building, especially in London and whenever superior materials and architectural style is required, must be expected to run up to 1*s.* per cubic foot.

In concluding these sections on buying or building a house let this final advice be given. The plans cannot be satisfactory, or at least cannot be as completely successful in producing the best possible, unless gone through again and again before final approval. And as the house grows up too much attention cannot be given, whether by architect or owner, if the work is to be not only good of its kind but suitable, convenient, and tasteful in every corner and detail of the home. A good house is a work of art, not the product of a machine.[1]

[1] A useful list of books on architecture, house-building, designing, furniture, decorations, &c., may be found in the catalogue of B. T. Batsford, 94 High Holborn, W.C. This bookshop affords special facilities for the sight and selection of all books on houses.

For rural hygiene especially see V. B. Poore, *Essays on Rural Hygiene* and *The Dwelling House* (more generally useful).

On plumbers' work see *The Lancet Special Commission*, Office of *The Lancet*, 423 Strand, W.C.

II

TRADESMEN, WORKMEN, AND SERVANTS

§ 1. The Purchase of Goods.

Contract of Sale.—The legal relations of the householder and his tradesmen are governed by the law of the Contract of Sale of goods. This is by far the most frequent of all contracts. The ordinary citizen is obliged, in order to supply his wants, to enter into it almost daily. It would therefore seem at first sight that some knowledge of the law of that contract is an essential equipment for every one: and yet it cannot be truly said that it is so. The fact is that the practice of honest tradesmen is so uniform as to be a matter of common knowledge: and this knowledge is generally sufficient to carry a reasonable man through his everyday transactions without difficulty serious enough to turn his thoughts to the law. The maxim that honesty is the best policy varies in cogency with the strength of competition. The retail buyer is much more disposed when badly treated to transfer his custom elsewhere, than to seek legal remedies which will probably be more costly than the relief obtained warrants: and as the buyer's remedy is so easy, tradesmen find it worth their while to waive their strict rights, or not to assert them, rather than lose the chance of future profits.

These considerations do not, however, apply in nearly the same degree to the merchants whose business consists in buying and selling on a large scale. Here the daily fluctuations in the market may rapidly change a very profitable contract into a very unprofitable one: and it often becomes worth the while of a buyer or seller to insist upon the strict

rights given him by the law, when any breach has been committed. For such as these then, no knowledge of the law of sale can be too precise; and no doubt many commercial losses could be avoided if business men were regularly trained in this direction. But it is not to them that this book is addressed; and a far more accurate knowledge than could possibly be conveyed in a short chapter would alone be of use.

Occasions may however arise in the life of every one, where a fair notion of his rights against and liabilities to the retail seller will be of use, if only in the avoidance of causes of dispute. And apart from the question of utility, it is certain that no one can be the worse for some clear conception of a legal transaction he goes through so constantly. Moreover, the subject (though by no means easy) is at least as interesting as any legal subject, and becomes more so from the constant opportunity for its application. If conundrums attract the reader, they are to be found in profusion in the most trivial examples of everyday life: very often the simpler in appearance is the transaction, the more intricate its legal solution. The purchase of the leg of mutton for dinner may easily furnish a theoretical problem of which the most learned jurist will speak in hushed accents.

Now in one respect the law of sale of goods is more accessible to the layman than most other departments of the common law, inasmuch as it has of recent years been codified into a comparatively short statute,[1] a copy of which may be bought for a few pence. It is to be feared, however, that the reader who expects to find in this document a talisman by which to try any difficulty that may confront him will be disappointed. Apart from the merits or defects of the Act, the practical difficulty in a given case is not so much to enunciate the right principle as to apply it to the particular facts. And it is probable that even if the Act is read as a piece of theory,

[1] The Sale of Goods Act, 1893, 56 & 57 Vict. c. 71.

the lay reader would be tempted to pass judgement on it as a mixture of the unnecessary and the unintelligible. As, moreover, it contains a great deal that would be of scanty use to the average person, and as the remainder would require much introduction and comment, it has been thought simplest to make the statement which follows for the most part independent of the actual language of the Act, which will only be occasionally quoted.

A sale is made up of two legal ingredients. It consists in the first place of a contract, governed by the general rules which apply to all contracts, and in the second place of a transfer of the article which is the subject of it from one person to another. Now in a great many transactions the contract, to the eye of the ordinary person, is not obvious. If I go into a greengrocer's shop, pick up an apple from a box marked '1*d.* each', put down that coin upon the counter, and put the apple in my pocket, there is a complete sale. But there seems little contract about it. The fact is that the mutual promises, that of the seller to supply, and that of the buyer to accept and pay for the article, are so immediately fulfilled that all that appears is the transfer of the penny from my pocket to the shopman's, and the contrary transit of the apple. This is a type of the simplest class of sale, that wherein the contract and the 'passing of the property' as it is called, are simultaneous.

But there is another class in which contract and transfer are easily separable. Suppose in a more lavish mood I had written to a dealer, 'Please send me a barrel of Newtown pippins,' and he had answered that my esteemed order should have attention. Here is a contract plainly concluded. But as yet no apples have become mine. He will have to procure or select a barrel of that description of apple, and hand them to a carrier or otherwise arrange for their delivery to me: then, and not till then, will certain specific apples, those namely in the selected barrel, be my property. This last

class of sale is known as a 'sale by description', as opposed to a sale of a specific object seen by the buyer. The distinction may appear trivial at first sight, but its importance is really cardinal, as will be seen later on. For the moment, however, all that is intended to be shown is the nature of a sale, as being of this twofold character. For what have been called the two ingredients give rise to different legal questions, and can to some extent be treated separately. Broadly speaking, the 'contract' ingredient gives rise to the most important questions, those, namely, of the nature of the promises made by each party, especially the seller; and what are the remedies for the breach of them. The second ingredient raises questions more technical, and less important to the uncommercial citizen, which mainly resolve themselves in deciding at what point of time the article bought ceases to be the property of the seller and becomes that of the buyer: a question sometimes so easy to answer as to be not worth asking, at others so difficult that it can scarcely be answered at all.

Buyer's Contract.—Now it has already been stated that the mutual promises which form the contract of sale are the promise of the seller to sell and of the buyer to buy an article. These promises must of course be present in every sale. The seller's promise may be made in a thousand ways: by putting the article in his shop-window with or without a price marked on it, by sending out an advertisement of it, and so on. The buyer's promise is more usually an express one; but it may consist, as in the example[1] given above, in simply putting down his money and taking the article, whereby he makes the promise and carries it out by one and the same act. And observe that an express agreement as to price is not necessary. If nothing is said as to this, the law implies that the price shall be a reasonable one.

We may therefore dismiss the question of the buyer's contract in a few words. Having promised to buy and pay

[1] Cf. also the penny-in the-slot machine.

for an article it follows that if he fails to do so he becomes liable to an action on the part of the seller. If he has accepted the article and does not pay, the seller may recover the agreed price. If he has merely promised to buy, but before the article has become his refuses to accept or pay for it, the seller may recover the damage he has suffered—that is, speaking generally, the loss of the profit he would have made on the sale.

It may, perhaps, be worth mentioning that unless there is any agreement to the contrary, the proper time for payment is when the article bought is delivered to the buyer; and therefore the expression, 'terms, cash on delivery,' which is frequently seen upon tradesmen's bill-heads is really legally unnecessary. But very little evidence is required to raise a presumption that it was intended that a reasonable credit should be given, as, for instance, when the parties have previously dealt on those terms.

Seller's Contract.—When, however, we come to the seller's side of the bargain, we must be prepared for far less simple problems: for over and above the bare promise to sell, which is the basis of the transaction, the seller very commonly makes other promises, mostly with reference to the quality or nature of the article. Sometimes these are implied by the law in the mere promise to sell; sometimes they are expressly made by the seller at the time of the sale. Now it is the breach of promises of this nature which gives far the greatest trouble to the buyer, and it is to this part of the law that the greater part of this chapter will be devoted.

Description.—Evidently the seller's first duty is to sell what he has agreed to sell. In what may be called 'sales over the counter' of a specific thing, the mere act of handing that thing to the customer fulfils the duty. But when we come to 'sales by description'—to the large class of cases where the buyer orders, and the seller undertakes to supply, something the buyer has not seen—the duty of the seller is more complex.

To begin with, he must supply an article which accurately corresponds with the description under which it has been sold; and if he sends something different, he has failed to carry out his contract just as much as if he had sent nothing at all. And we shall soon see that his duties generally go a good deal further.

Let us take a simple example:—An order is sent to a fishmonger to supply a pound of salmon, and the fishmonger undertakes to do so. Now if for any reason he finds himself unable at the last minute to send salmon, he may do one of two things: he may send nothing, or he may send some different fish. In either case he entirely fails to fulfil his contract. Of course the buyer may, if he like, accept the substituted fish; in which case there is a new contract, and he becomes liable to pay the proper price of it.

Of course the question whether or not the article supplied does or does not correspond with the description, may be a difficult question of fact. But this is only likely in mercantile contracts where large quantities of goods may be sold under some comparatively vague description—such for instance as 'foreign refined rape oil', and the like. And here it may be noted that by § 34 (1) of the Act, in all cases 'where goods are delivered to a buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract'.

But now let us suppose that the fishmonger does indeed send a pound of salmon, and thus far fulfils his contract in that what he sends corresponds with the description. But on its delivery it turns out that the salmon, owing to age, is uneatable. It is easy to guess that the buyer is not bound to accept it; and the reason, as we shall find, is that the fishmonger has broken a promise that was implied by the law in his promise to sell. We are now to inquire what

the promises are that the law implies, and what are the remedies provided for a breach of them or of any other promise that may be expressly made by the seller at the time of the sale.

'*Reasonably Fit.*'—We will take first those which are implied by the law. The most important of these, and the only ones with which it is necessary to trouble the reader, are those which proceed from the general policy of the law in obliging the seller to supply wares of reasonable goodness. There are two such promises that may be implied, the first in all sales, the second only in sales by 'description'.

The Act, § 14 (1), provides, 'Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.'

The scope of this section is very wide: it will be found on reflection that its words cover a large proportion of the ordinary purchases which a reader of this book is likely to make. Let us see first how it applies to what have been called 'sales over the counter'. The old rule as to such sales is one with which the reader's ear is probably familiar: *caveat emptor*. If the article turned out badly, so much the worse for the buyer. In the course of time, however, the rule has been gradually modified, and the outcome of this tendency is the enactment we are discussing, which very much limits its scope. But it is still the rule in all cases which do not fall within the terms of the section. Let us take them one by one:—

(*a*) The buyer must 'expressly or by implication make known to the seller the particular purpose for which the goods are required'.

If, then, the sale is of a piece of wood, or a yard of linen (things which might be used for a number of purposes), and the buyer does not tell the seller what he wants it for, there is no implied promise: *caveat emptor*.

But observe that the use to which the article is intended to be put may be made known 'by implication'. The very nature of the article very often does this: it could scarcely be contended, for instance, that the buyer of a lawn-mower, or a pair of boots, does not make known to the seller the particular purpose for which they are required, without putting it into words.

(*b*) 'So as to show that he relies on the seller's skill or judgement.'

This of course is a matter to be gathered from the circumstances; it might be that the buyer deliberately disregarded the seller's recommendations, but this is scarcely a common case.

(*c*) And further, 'the goods must be of a description which it is the seller's business to supply'—and so if I buy an arm-chair at a bazaar, or a knife-grinder of my next-door neighbour, here again, I must rely upon my own wits in detecting defects, for there will be no remedy when the bargain is once made.

(*d*) A very important exception, however, is contained in the last words of the section, so many things being nowadays sold under patent or trade names. If, therefore, I ask in a shop for a such-and-such sewing-machine, or a packet of so-and-so's soap, there is no promise implied.

The section applies in just the same way, as far as the implied promise is concerned, to sales by description, where there is merely a promise to buy something the buyer has not seen. But when we come to consider the buyer's remedy

when the article bought does not comply with the requirements of the section, we shall find an important difference between the two kinds of sale. The reader will notice that the section speaks of the promise as a 'condition'. This is unfortunately a technical word, the use of which in the Act raises great difficulties. For the moment, however, it will be enough to say that where the contract is to buy something the buyer has not seen, the breach of a condition to be performed by the seller will entitle him, when it is delivered, either to send it back, or if he prefers to keep it, to claim damages for the breach. Where, on the other hand, the buyer has actually bought a specific object, such as the single apple, he cannot, in general, return it, on the ground that some promise has not been complied with, unless he has expressly stipulated therefor. His only legal remedy, in such a case, is a claim for damages: and here it may be observed, that whenever he is entitled to claim damages from the seller, he may, if he has not already paid, enforce his claim by making a corresponding reduction in the price.

The sum recoverable is not necessarily confined to the difference in value between a good article and the bad one: it extends to any damage that is the direct result of the seller's breach of his promise. A case that has been actually before the Courts furnishes a striking example. The plaintiff had bought a hot-water bottle for his wife's use: it was a badly made article, and, when used, burst and severely scalded the lady. The plaintiff recovered £40 under the section we are discussing.

It is evident, however, that the buyer is most in need of protection where he orders something that he has not seen; and accordingly the law has added a much wider requirement in the case of sales by description.

'*Merchantable Quality*.'—'Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied

condition that the goods shall be of merchantable quality: provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.' [§ 14 (2).]

The reader will now, it is hoped, be able to interpret this rule without trouble. 'Merchantable' is a necessarily vague expression, but it may be taken to mean the ordinary level of goodness which may be reasonably expected from the description.

We cannot do better than return to the pound of salmon for an illustration. The salmon having been bought 'by description' from a fishmonger, he is taken to promise that what he supplies shall be 'merchantable'. And therefore in delivering a piece of inedible fish he has broken a condition of his contract, and the consequences already described must ensue. If, then, the buyer, or his cook, can detect the state of the salmon when it is delivered, he is entitled to send it back.

If, however, he keeps it, he must be content with damages, which, as has been said, he may conveniently recover by knocking off the bill the difference in value between good fish and bad; or if it be quite valueless he may refuse to pay anything at all. And it may be observed that in such a case as this the condition implied by the section previously discussed is probably also present: namely, that the salmon should be fit for a particular purpose, that is, to be eaten. The reader may remember a case that was lately tried, where the plaintiff had bought at a restaurant a bun which contained, besides its usual ingredients, a stone. He sustained a broken tooth, and one of his grounds of complaint against the proprietor was that under the terms of § 14 (1) the bun should have been fit for human food, which in fact it was not. It was held that the promise was to be implied, though the jury took the view that in this case it had not been broken.

Express Representations.—So much then for the tacit promises that may be implied by the law from the mere

circumstances of the bargain. But of course it often happens that the seller is moved by his desire for business to make an express promise or representation at the time of the sale, either as to the quality or nature of the article, or as to some other matter connected with the transaction. This subject is really a part of the general law of contract; and as applied to the sale of goods presents much difficulty.[1] The greatest authority on the subject has described the rules as 'very subtle and perplexing', and the reader is assured that this is no over-statement. He will, however, be relieved to hear that as the practice of retail trade seldom raises these difficulties, it is not proposed to trouble him with a detailed discussion of the rules. The following attempt to state the law only professes to be an outline, and deals only with the kind of situation which it is thought is most likely to occur; and for the rest it is thought better to suggest how difficulties may be avoided than to try to elucidate distinctions which sometimes reach the point of invisibility.

In the first place, any contract which has been induced by the fraud of one of the parties gives the right to the other party to rescind the contract if he discovers the fraud in time. Applying this principle to a contract of sale, we find that when a seller induces a buyer to accept an article by a *wilful* false statement, the buyer may send it back if he has not substantially altered it by use: and if the inducement led him to promise to accept the article at some future time, he may, on discovery of the deceit, refuse to accept it. And in either case he may of course stick to his bargain and claim

[1] Much too technical for discussion here. They arise partly from the distinction between conditions and warranties, partly from a supposed equitable rule that contracts induced by innocent misrepresentation can be rescinded, and partly from the language of the Act itself: § 11 (c) seems incapable of a satisfactory meaning. It is regrettable that the opportunity afforded by the codification of simplifying the law was not taken. It should be observed that the Scotch law differs from the English.

his damages. So much for fraud: it may, however, be that the statement, though untrue, was made innocently, or (what comes to the same thing as far as the law is concerned) that the buyer is unable to prove that the seller knew what he was saying to be false. In this case different considerations arise.

Such statements or promises most commonly relate to some quality in the subject of the sale; and here again the distinction between a present sale of a specific object, and a sale by description of something not seen by the buyer, reappears. In the latter case the statement or promise generally forms part of the description under which the goods are sold, and therefore, as has been already said, if when delivered they do not comply with the promise, the buyer has the option either of rejecting them, or of keeping them at their proper price. When however the buyer has seen and examined the object before buying it, a statement made as to its quality stands in a different position. Here the general rule is, that any definite promise by the seller, either as to the existence of some quality in the article sold, or as to something to be done to it by him, gives a right to the buyer, if it is broken, to recover the damage he has suffered, but not to return the article. Such a promise is called a warranty. If A says to B 'Is this cat a good mouser?' B answers that it is, and A thereupon buys it, the fact that the cat is inefficient in this respect will give A a right to damages only. But the promise must be a definite one. Clearly, for instance, a mere expression of opinion is not enough. A picture-dealer who says, 'I believe this picture to be a Gainsborough, but I cannot say more,' does not put himself under any liability: so long, that is, as the opinion is an honest one. And further, it need scarcely be said that the law does not treat seriously those vague laudatory ejaculations of tradesmen, such as 'that is a splendid article', however wide of the truth they may be.

Moreover, in order to be binding, the promise must be made in strict connexion with the sale. In a well-known

horse case, an intending buyer went down to Tattersall's to see a horse that was advertized for sale on the following day. He was proceeding to examine its legs when the owner, who was present, said: 'You have nothing to look for; he is quite sound': to which the other answered, 'If you say so, I am perfectly satisfied.' Next day he bought the horse, which was in fact unsound: but when he sued the seller for damages, he failed, on the ground that the latter's statement was no part of the bargain.

Conditional Purchase.—It is often the case, however, that the right to damages which arises where a warranty has been broken, is an inadequate compensation to the buyer. The existence of some characteristic in the article bought may be of essential importance to him: he may want that or nothing. And therefore, although in dealing with honest tradesmen he is seldom likely to be in difficulty, it is always wise, especially where the article bought is of some value, to make his contract in such a way as to give him the right to get out of it altogether if he does not receive what he wants. There is no difficulty about this: it is only necessary to make his contract *conditional.* Let us see what is meant by this.

A sale, like any contract, may be made subject to a condition that some future event will happen; that is to say, the parties may agree that unless or until that condition is fulfilled the contract will not be binding. Returning, for instance, to the sale of the cat, if A with greater wisdom had said 'I will try this cat, and if he proves a good mouser I will buy him', then if the trial proved unsatisfactory he might send the cat back.

This kind of conditional contract is often conveniently made by having an article sent 'on approval', in which case no sale takes place until the approval is given: and it is only necessary to warn the reader that if he keeps the article for more than a reasonable time without saying that he disapproves it, he will be taken to have accepted it.

Much the same considerations apply where the seller's requirement is not some quality in the article, but something to be done to it by the seller. I may, for instance, agree to buy a second-hand bicycle if the dealer will repair it, but not unless. This again would be a conditional contract: and moreover, as was observed when § 14 was discussed, inasmuch as the condition is one to be performed by the seller, I may, if it is broken, either refuse to accept the article when delivered, or, if I choose, accept it and claim damages. If however I had said: 'I will buy this bicycle: will you repair it?' and the dealer had assented, his promise would be a mere independent agreement to do the work, failure in which would only entitle me to damages.

Stipulations as to the time for delivery also form good examples. Where it is of essential importance that an article, (say a wedding-dress) should be delivered on a particular day, the same care is required in making the contract conditional upon that event. If the buyer relies on a mere promise by the seller, he will probably find himself in a position of great annoyance with no remedy but a claim for damages which it is almost impossible to state in terms of money. He should therefore make it clear to the seller that unless it is delivered at the right time it will not be accepted or paid for.

The reader will realize, on comparing these rules with his experience, that in practice retail dealers often treat their customers much more liberally than the law requires. Tradesmen are of course constantly expected to, and in fact do, take back articles which do not satisfy the buyers, though they are in no sense legally bound to do so. It should also be remembered that where there has been a breach of a warranty giving rise to a right to damages, the mere existence of the right tends to influence the seller to take back the object.

Time of Transfer of Ownership.—The above are the main features of the contract as it appears in retail business. There

are many other problems connected with the sale of goods that have been passed over because of the unlikelihood of their occurring in such small dealings. The question of the transfer of the property in the goods bought is one of these. A few words will indicate how its importance arises. If a man buys a specific article in a shop and tells the dealer he will call for it the next day, but during the intervening night the shop is burnt down and the article destroyed, who, it may be asked, must bear the loss? The answer in this case is easy enough. The object bought becomes the buyer's at the moment of the bargain, although he may not even have paid for it, and he must therefore suffer for the accident. But cases of far greater complexity may arise. So far, however, as the risk of loss is concerned, the matter is only likely to be serious where the value of the goods is high, in which case they are nearly always covered by insurance. The other importance of the matter has already been hinted at: the seller's rights against the buyer who will not pay for the goods. Where they have actually become the buyer's property, the seller may of course recover from him the whole price: where, however, before the property has passed, the buyer refuses to accept, the seller can only recover from him damages for the breach of his contract to buy, which may be only a small sum.

The reader who cares to look will find the rules which govern the question of the passing of the property clearly expressed in §§ 16–20 of the Act. Roughly stated, they come to this: where the goods bought are specific they become the buyer's at the moment of the sale, unless the seller has to do something to them 'for the purpose of putting them into a deliverable state'; in which case the transfer is delayed till that is done: and probably where an article is bought in a shop and the shopman undertakes to send it home, it does not become the buyer's until it is delivered. In the case of a sale by description, the property passes when goods of that

description are 'unconditionally appropriated to the contract'. It may be added that where the seller has to manufacture the goods, they do not become the buyer's until they are finished and delivered, or at any rate approved by him. On the whole, however, it is to the last degree improbable that the reader will ever have to consider the question practically. In one case, perhaps, its importance may come home in a more striking way to the unwary. What are called hire-purchase agreements are now very common. The general rule as to these is, that until all the instalments are paid the object does not become the property of the buyer. But nowadays the agreements are drawn up in such explicit terms that the buyer ought not, if he reads what he signs, to be in any doubt as to its meaning.

Goods over £10 in Value.—There is one last and important warning to be given to the reader, which cannot be better stated than in the words of the Act.

'Section 4 (1). A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.'

This provision is venerable by age, if by nothing else, for it practically reproduces a section of the famous Statute of Frauds (1677). In the course of 200 and odd years a vast amount of words and money has been spent in determining its meaning, and a good many unfavourable comments made upon its wisdom. It still, however, remains the law, and in general comes to this, that where there is a mere verbal bargain for the sale of goods to this value, and one party fails to carry it out, the other will have no legal remedy at all unless one of three conditions exist: either (*a*) the buyer has

accepted and received the goods, that is, the goods have been not only delivered to him but he has done something which shows that he treats them as sold to him; or (*b*) he has made some payment; or (*c*) the party seeking redress can produce some written or printed paper signed by the other, from which the terms of the contract can be gathered. Apart from the very technical question of what amounts to an 'acceptance', the main difficulties have arisen under the last heading. All that need be said here is that the courts have been liberal in interpreting the words 'note or memorandum'; so that even when a gentleman had verbally agreed to buy some goods which he afterwards refused to pay for, and wrote to say that 'the only goods selected were the chimney-glasses, amounting to £38 10*s*., which goods I have never received and have long since refused to have', the letter was held sufficient to make him liable. But the reader is advised not to trouble himself with these subtleties. It is very easy (if he has any reason to anticipate difficulties) to get the terms of his bargain down on a piece of paper and the seller's signature to it, and when there has been any haggling about price the precaution is highly advisable for other reasons; such as the uncertainties of memory or the possibilities of a misunderstanding as to what is intended. It may be added, as a final inducement, that no stamp is necessary upon any written agreement for the sale of goods.

§ 2. The Difference between Work and Service.

The purchase of goods will not supply the whole of the householder's needs: it is also necessary for him to purchase work and service.

There are two ways in which one man may contract to work for another. The distinction is not always an easy one to make, but it is a distinction with important differences, involving separate treatment. A person may either undertake,

for payment, to execute a given piece of work—say to mend a chair; or, he may undertake to enter the service of another for some period, and whilst in that service to work for him under his orders. This distinction is expressed in legal language by calling the former contract one of 'work and labour', the latter one of 'master and servant'; and lies, not in the class of work done, but in the conditions under which it is done, in the relations, that is, between the employer and the employee. Let us then examine for a moment what the difference is.

Contract to do Particular Work: Contract to serve under Direction.—In the first case, when the contract is one of work and labour, the workman promises merely to do the piece of work in a proper way, and no more. Whilst he does it he is under no other obligation to the person employing him. He is, for instance, under no duty to work in any particular way, at any particular time, and so on, unless this has been expressly stipulated for. To take an example: I, having a defective tap in my bathroom, call upon a plumber and ask him to come and mend it; he agrees. Here is a contract of 'work and labour'. The plumber then comes to the house and begins his work. Now if I have particular views as to the way in which plumbing should be done, I may impart them to him; but he need not, unless he choose, follow my directions: his promise has been, to mend my tap, not to mend it *under my orders*. But suppose instead I engage a man at a weekly wage to act as 'handy man': he thereby becomes my servant. It may be amongst his duties to mend taps: if so, I may in all respects superintend his work: direct him when to begin, when to leave off, what materials to use, how to do the work, and so on. It is in fact a part of his contract to obey my orders, so long as they be reasonable and relate to the duties which he has promised to discharge. It will be seen later on, when the contract of service is particularly considered, that not only are his obligations to me different from those of

the mere workman, but so also are mine to him : and further that, by engaging a servant, I become to some extent responsible for him to the world at large.

Work for Payment : Service for Wages.—For the moment, however, it is only necessary to grasp the main distinction between the two kinds of contract. In the first the primary subject of it is a piece of work to be done for a payment, in the second the rendering of service to another for a wage. They will now be considered separately and in more detail. And inasmuch as the contract of work and labour is very much simpler than the other, it will be best to take it first.

§ 3. Work.

Verbal and Written Contracts.—In the ordinary course there are some pieces of work, sometimes manual, sometimes the headwork which may be roughly classed as professional, which the householder will be bound to pay others to do for him. His house must be painted by a painter, his will drawn by a solicitor : in each case he must contract with them to do the work for him, i. e. he must promise to pay for the work, whilst the painter or solicitor simultaneously promises to do it. The promises may obviously be made in different ways—in the course of a simple conversation, by letters exchanged, or in a formal document drawn up specially for the purpose and signed by the parties. As a general rule [1], one way is as valid and binding as another, and the particular form will depend upon circumstances. For though there be no difference in the legal effect of a contract made by word of mouth, and one made in writing, there may be a very considerable difference in the practical result, and it is therefore highly important to choose the right way. The majority of contracts for work

[1] To which, however, there are exceptions : the only one necessary to mention here is that a contract which cannot be performed within a year is practically invalid unless in writing. See post, p. 62.

into which the ordinary individual is likely to enter are so small and simple as to be properly made with the minimum of formality, but when larger amounts are involved greater care is required. It would be no more absurd to execute a formal agreement, duly stamped and signed, with a man who comes in to hang a picture, than to give an order for the construction of a house in the course of a casual conversation with a builder. And inasmuch as the tendency is very strong to neglect formality, the reader must forgive a few observations which apply not only to the contract now in question, but to all contracts. Once and for all then, when large sums of money are involved, or when the terms or details of a contract are at all complicated, it is in the highest degree advisable to reduce it to writing. It is not only that with the best will and honesty in the world, the memories of two men as to what exactly was said at a conversation long past tend to differ, but that the mere fact of writing down the terms involves an effort to realize exactly what is intended, and precludes vagueness. No particular form of writing is necessary, though of course the best is an agreement signed by both the parties.[1] But two or three letters are often sufficient, e. g. an estimate sent by a builder for the decoration of a house, accepted by the employer's answer. The important thing is to have some writing which has been accepted by both parties as the basis of the contract, and which is always there for reference in case of a dispute. The reader is assured that the neglect of this precaution is a source of a great deal of unnecessary litigation, not to speak of unpleasant wrangling which stops short of a court of justice.

Obligations of the Workman.—No sooner is the agreement concluded than the duty of the workman, as we may call him,

[1] And stamped. Generally speaking, a sixpenny stamp is necessary to agreements, but there are exceptions.

begins. He is now bound to do the work: and not only to do the work, but to do it properly and promptly. Translated into the language of the law, this obligation may be thus stated: Every person who undertakes to do a piece of work is treated as promising (or 'warranting') that he will do it with a reasonable amount of care; if, moreover, by publicly exercising some trade or profession he holds himself out as specially proficient in the particular work to be done, he warrants not only that he will use care, but also a certain degree of skill: such ordinary skill, that is, as is to be expected of a member of that trade or profession. And in any case he warrants that he will do the work within a reasonable time.

It will be seen at once that we are here in a region of very vague generalities; 'reasonable care,' 'ordinary skill' are phrases which fifty different people may apply in as many ways; but it is equally clear that a more precise standard could not be made: all that can be said is that the degree of skill depends on the profession of the worker. The sign-painter need not produce an Academy picture, but if he falls below the ordinary standard of sign-painting he has broken his warranty. But to the question what is the ordinary standard of a sign-painter, no certain answer can be given but the verdict of a jury.

We see then that the workman may break his contract in three ways: he may (first) not do the work at all, or (which is the same thing in law) leave it unfinished; secondly, he may do it, but do it badly; and, thirdly, he may take an unreasonable time about it. What are the remedies of the employer? In the first case, inasmuch as he has only promised to pay for a definite piece of work, until that piece of work is done no obligation to pay arises. It follows then that no payment at all need be made for the part of the work which may have been completed. But it must be remembered that the work contracted for often consists of a number of

separate and distinct jobs: in such cases the workman who breaks off in the middle is entitled to payment for any completed piece of the work, subject to any claim for damages which the employer may have suffered from the non-performance of the remainder. Thus if the contract is to paint the outside of a house for £20, no payment need be made if only half the house is painted. But if the contract is to paint the outside for £20 and the inside for £30, completion of one job gives a right to payment for it, even though the other be left undone.

The work, however, though finished, may have been done without proper care or skill. This will of course entitle the employer to recover for the damage he has suffered. In small matters, the value of this right depends largely upon whether the defects are discovered before payment: for if they are, the employer is in the strong position of being able to 'knock something off the bill', leaving the contractor to sue him for the balance if he thinks it is due. But once the bill has been paid the tables are turned and the employer must have recourse to the law, if he thinks the amount in dispute warrants it. When the employer's only complaint is that he has not got what is contracted for, the sum recoverable is the difference between the value of what has been done and what should have been done. But of course the work may be of such a kind that negligence in performing it may have very serious consequences. Loss of life or limb may be the result of carelessness in, say, the repair of a motor car. In such a case the sufferer may recover very large damages, if he can show that the injury was the natural and probable result of the workman's negligence.

As to the workman's obligation to do his work within a reasonable time, though it is perhaps the commonest and certainly the most annoying, of his possible defaults, it is difficult to give much comfort. Of course the workman is liable to pay the employer any damage he has suffered by

the delay: but inasmuch as the damage, in nine cases out of ten, is only moral or intellectual, he will have little chance of exacting it. If time is really a vital consideration, let him remember it when making his contract and agree definitely that unless the work is done by a given date, damages shall be paid at so much per day. If he can persuade the workman to agree to such a term, he will be safe.

Obligations of the Employer.—The obligations of the employer are confined to allowing the employed to complete his task, and paying him for it. If, therefore, he at any time prevents the work being done, by putting it into new hands or otherwise, he becomes liable to the workman in the first place for the value of the work which has been actually completed, and in the second place for the damage which the workman has suffered by reason of the breach; the loss, that is, of any profit he would have earned from the completed job. The other possible breach, namely, the refusal or neglect to pay the bill for the completed work, is a more common one, and produces a situation that scarcely requires illustration. One exceptional rule as to payment may, however, be mentioned. When an object has been put into the possession of a workman for the purpose of work being done upon it, the workman is entitled to retain possession of it until payment is made: in legal terms, the workman has a lien upon the article. Thus if one sends a chair to an upholsterer to be re-covered, the upholsterer obtains a better chance of enforcing payment than if he had been called in to do the work on the owner's premises. This is, however, a right that is rarely made use of. Similarly a solicitor has a lien upon documents entrusted to him by a client. But apart from these cases the doer of work is simply an ordinary creditor, and must make use of the ordinary means of recovering his debt.

Professional Men's Work.—There are some kinds of work which from their nature give rise to questions rather different

from those connected with purely manual labour. What are generally known as 'professional services' are really only one class of work, but inasmuch as they consist almost entirely of headwork, and deal with matters of far greater difficulty and uncertainty than handiwork, it results that what is usually contracted for is not so much a thing to be done, as an effort to do a thing. Sometimes this effort is no more than mere advice; sometimes it is advice coupled with practical steps.

The two kinds of work are sometimes within the province of the same person. A solicitor, for instance, may be employed to draft a will; the employer giving him the fullest instructions and asking for no advice. Here we have a piece of headwork closely analogous to handiwork. The solicitor undertakes, that is, to do a definite thing—to draft a will in a proper legal form, which will duly carry into effect the wishes of the employer. If the will he draws does not have the desired effect, is not in accordance with the instructions, he has failed to perform the contract. But the same solicitor may be asked to advise his client how to act in a position of difficulty. In this case all that he promises is to give the expert advice that one skilled in the law may be supposed to have at command: but he guarantees no result. He does not, in short, promise to get his client out of his difficulty[1].

The position of a doctor is very much the same: it is true that a surgeon who is engaged to cut off a limb, a dentist to

[1] Solicitors' fees are for the most part the subject of regulation, statutory or official. Their usual practice is to charge a lump sum for their services, and this they are entitled to do in some cases. But the client may in most cases require a detailed list of the items charged. As, however, the scale of fees is unfortunately not always elastic enough to allow adequate charges for the most important services, it is often necessary for the solicitor, in order to obtain a proper remuneration, to charge numerous small sums for very trifling matters. Hence the somewhat irritating appearance of solicitors' detailed bills, which are often the source of a quite unjustified prejudice.

stop a tooth, is doing a mere piece of manual work, though of a difficult kind. But nine-tenths of the doctor's work consists of advising, and of superintending the carrying out of his advice. And it is the advice and care which he promises, and for which he is paid, and no more. He does not, that is, promise to cure a patient as the plumber does to mend the tap, but only to use his best efforts for that end: though, like the plumber, he adds an undertaking that his efforts shall be up to a standard.

It follows then that the relations of a doctor to his employer are different from those of a doer of 'piece-work'. In the first place the doctor is often employed for no definite 'job', but only as long as the employer needs, or thinks he needs, his advice. At any moment then, in the course of a doctor's attendance upon a 'case', the person who has called him may say he does not desire him to come any more, irrespective of the way in which the doctor has done his work: and the doctor will have no claim to anything but his fees for the visits which he has actually made. And conversely the doctor may, in the middle of his treatment, announce that he cannot continue it; though in this case he must give notice sufficient to enable another doctor to be called in.

If, however, the doctor, in the course of the attendance he does give, is either neglectful, or fails in using that degree of skill which is to be ordinarily expected of a physician[1], he lays himself open to an action for damages. Such cases are happily uncommon; but they have arisen, and, as can be imagined, have given rise to considerable difficulty. It is perhaps scarcely necessary to point out that the mere fact that one doctor's treatment fails, whilst that of another subsequently called in, succeeds, does not show that the first has been unskilful in the above sense. For this purpose it is

[1] i. e. a physician of his class. A country doctor in a remote district will not be expected to bring the same skill to bear as a London specialist.

necessary to show that the treatment was so improper that no ordinarily trained doctor would have made use of it. But no doctor would promise always to be as good as the best, any more than he would promise always to cure.

§ 4. Service.

General Principles.—We now come to that other species of employment in which the relation of employer and employee is that of master and servant. It is to be observed that the latter word has, like so many words, been much narrowed in common speech. Speaking legally, however, it of course applies to all cases where the employee binds himself to work for a specified time or until further notice under the orders of another: the Secretary of State is in theory as much the servant of the Crown as the Secretary of State's scullion is of the Secretary of State.[1] Large numbers of persons of all degrees spend their whole adult life in working in the capacity of servant, and probably every reader of this book will be at some time or other a master. The subject therefore embraces a large part of the legal duty to one's neighbour, and is for that reason somewhat difficult to treat in a few words. The same principles underlie the employment of the civil servant, the private secretary, the city clerk, the grocer's assistant, and the knife-boy; all are servants, but naturally the details of their contracts vary widely.

The general principles, however, of this contract are far more complex, and in a sense vaguer, than those of the contract of work and labour. It may seem at first sight that the engagement of, say, a clerk at so much a year is a simple enough matter for both parties. But the relationship thus created is in reality far from simple: the fact being that the

[1] In one respect, indeed, he is worse off; as a rule servants of the Crown are employed during his Majesty's pleasure only, and are therefore (in law) liable to dismissal at any moment without notice.

law herein lays its sanction upon a number of obligations that in the first instance seem to come within the province of ethics; at any rate so far as the servant's relations to his master are concerned. Originating from a time when servants, for the most part agricultural or domestic, were in a sense members of the family, it has retained a view of the mutual duties that dimly reflects the relation of father and child. The tutelary position of the master to the servant has in course of time become somewhat shadowy, but on the servant's side there still remains, over and above the duty of obedience to orders as to the actual work to be done, a certain wider obligation of honesty and loyalty towards his master, implied by the law behind the express terms of the contract. The effect of this will be seen when the contract is considered in detail.

Contracts Verbal and Written.—Before doing so, a word may be said as to the form in which the contract is to be made. On this point the reader is referred to what has already been said above on the subject of the advisability of writing when the contract is one of importance. Contracts of service often bind a person for a considerable period, and subject him to their terms during most of his working existence; and it is therefore immensely important that he should have in his possession some document whereby to test his rights in case of dispute. Two observations applying especially to this contract may be added. The first is that, by reason of a famous statute dating from the time of Charles II, a contract which *cannot* be performed within one year, *must*, in order to enable a party to it to sue upon or enforce it, be evidenced by some piece of writing containing its principal terms and signed by the party against whom the legal proceedings are taken. Contracts of service not infrequently come under this description, and in these cases the suggested precaution becomes imperative. The other observation is that, in drawing up the contract, the parties to it, both master and servant,

should bear in mind the maxim *Respice finem*, and see that they omit not to settle definitely the way whereby the contract is to be put an end to—in other words, the 'notice' to be given—this being a detail which is fertile in disagreement.

Obligations of the Servant.—We may now consider the nature of the obligations that arise under the contract of service. In its simplest form it is a promise by A to serve B in some specified capacity for some period—which may be either agreed or left at large, in return for some remuneration—which last may be either money, or money together with board and lodging, or some other consideration, such, for instance, as instruction in a trade, as in the case of the apprentice. Now the first thing to be observed is that the obligations of the servant are much more onerous and varied than those of the master. He promises, in the first place, to execute the duties of his office, and to execute them, of course, with a reasonable degree of skill. So far we are still close to the contract of work and labour. But in this case there is a promise not only to do a particular piece of work, but to do *all* the work of that kind which his master may order him to do—with the limitation, of course, that the amount is reasonable. In other words, the servant promises to give up his whole working-day to his master, and to follow the orders of his master during that day, so long as those orders relate to his employment and are reasonable. But this does not close the tale of his duties. For he promises, over and above the bare performance of the task imposed, to deal with his master with honesty, and more, with loyalty and respect; and not, by any conduct of whatever kind, to injure or annoy him.

It will perhaps be well, before going further, to illustrate the foregoing general statements by some examples as typical as possible; the reader will, of course, bear in mind that their application depends not only on the terms of any particular contract, but also upon the nature of the service.

There is little difficulty about the actual doing of the work: plainly a cook must be able to prepare food with reasonable skill, and a clerk must write legibly, and so on. Obedience is also a simple duty. It is only necessary here to remember that the cook is not bound to obey an order to do typewriting, nor the clerk to peel potatoes; the orders must, that is, be confined to the kind of work promised. Moreover, there must clearly be some limit even to these: it is conceived that to disobey a totally unreasonable or oppressive order is not a breach on the servant's part.

When, however, we come to the question of the servant's general conduct or deportment we enter on a more difficult field, inasmuch as the standard to be observed must vary widely with different kinds of employment. Some duties, such as that of honesty, are easily enough recognized. Plainly, for instance, a clerk in a business house may be casting up figures or copying letters with the most faultless diligence, and yet doing irreparable injury to his master by betraying his business secrets to a competitor. This is a flagrant breach of his contract of service. But when we come to less pronounced cases the decision is sometimes very difficult. Quite a different standard will be required, for instance, of a curate and bank-cashier. The former may be reasonably expected by his master not to play bridge on Sundays, but he can scarcely be prevented from gambling on the Stock Exchange. Whereas the bank-clerk must certainly abstain from the latter diversion, though not from the former. All that can be said is that the servant must not conduct himself in any way which is likely to injure his master or to endanger his own ability to do his work.

In considering all these possible breaches on the servant's part, it must, however, be borne in mind that the proper course for the master to take must always depend on the degree of the misconduct. If, that is, the servant's breach, be it disobedience, incompetence, or misbehaviour, is of a

serious kind, the master may at once put an end to the contract and dismiss the servant, paying him nothing, at any rate, for his services since his last payment was due. But it must not be supposed that every trivial act, say, of disobedience, gives the master this right. Here, as indeed in all contracts, it must be a breach which goes to the root of the contract that entitles a party immediately to throw it up. Short of that, his only remedy is to recover from the offender the damage he has suffered. In the case of a contract of service, this right is generally of little value and may be disregarded.

In the absence, then, of a serious breach on the servant's part, such as in the light of common sense shows an inability or unfitness to do his work properly, or an intention not to do it, the master must give the servant the proper notice, if he wishes to be rid of him. And in practice, if he is in any doubt about his position, the latter course will be the most prudent. For if he resorts to a summary dismissal, he runs the risk of an action being brought against him for wrongful dismissal, in which, speaking generally, his chances of success are small, the sympathy of jurors being naturally in favour of the subordinate who has lost his place. In practice, moreover, if the master wishes at all costs to get rid of his servant immediately, he can always do so by paying him the salary which he would have earned during the proper period of notice; for he thereby prevents him from proving that he has suffered any damage by the dismissal.[1]

[1] In the case of *domestic servants*, there is by custom an absolute right to dismiss summarily if a month's wages are paid; but the servant is not entitled to board wages in addition, though these are often demanded, and on principle it is difficult to see why they should not be due. Another custom supposed to exist, and often acted upon, in domestic service, is that either party may within the first fortnight of the service give notice to terminate it at the end of the first month. The Court of King's Bench has decided that such a custom, if proved, would not be unreasonable, but has not been called upon to say whether it in

Circumstances, however, may prevent the servant from fulfilling his obligations without any fault of his own, and the question of illness might seem to raise a difficulty. In practice, however, it will not do so. An illness or incapacity which is evidently incurable would give a right to the master to put an end to the contract summarily, on the ground that it was no longer possible for the servant to carry out his part of it. But a temporary illness in no way alters the position: if the master wishes to get rid of an ailing servant he must give him the same notice as if he were well and active, and must continue to pay his wages as long as he remains in his service, ill or well.

Obligations of the Master.—On the duties of the master to the servant not much need be said. He is bound, of course, to retain him in his service as long as he performs his duties or until a proper notice to leave has been given. And, as has been already stated, if he breaks this obligation by dismissing him improperly, he becomes liable in damages. He is furthermore bound to provide the servant with the necessary facilities and materials for the purpose of the service. And when part of his contract is to provide board and residence, these must be sufficient and reasonable.[1] But he is not bound to provide medical attendance, apart from special agreement. The obligation of chief importance is that of paying the wage or salary upon the proper day. The servant's remedy must again be judged by the character of the breach, which will determine whether he can throw up his contract, or merely claim damages.

fact exists. And therefore any one wishing to rely upon it must be prepared to prove it by evidence.

[1] Moreover, it is a *criminal* offence for a master, who is legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse to refuse or neglect to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured. See the Conspiracy and Protection of Property Act, 1875, § 6.

Compensation for Accidents.—In some classes of service—which may be very roughly described as factory labour—the law has in the course of the last century interfered very widely with freedom of contract, or rather has laid upon employers of such labour a number of statutory duties which are designed to protect the welfare of the poorer class of servant.[1] To discuss the Factory Acts would be beyond the possibilities of this chapter. There is now, however, one matter in which legislation passed with the same intention affects nearly all masters and servants.

By the Workmen's Compensation Acts of 1897 and 1900 a right was given to workmen in certain specified employments to recover compensation from their masters for personal injuries 'arising out of and in the course of their employment'. The new Act of 1906 has widely extended the incidence of this right, so that now the employments to which it does not apply are the exceptions. Perhaps the easiest way to grasp the scope of this statute is by considering its definition of 'workman', the word used to denote the classes to which it applies, in section 13:—

'"Workman" does not include any person employed otherwise than by way of manual labour whose remuneration exceeds £250 a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an out-worker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing.'

Where a 'personal injury by accident arising out of and

[1] There is a very interesting discussion of this question in Mr. Dicey's recent work: *Law and Public Opinion in the Nineteenth Century.*

in the course of the employment' is caused to such a workman, his employer becomes liable to pay compensation. But two limitations should be observed :—

§ 1. (2) (*a*) provides that :—'The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.'

(*c*) 'If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.'

The compensation payable where incapacity to work results, is a weekly payment not exceeding 50% of the average weekly earnings of the workman during the previous year; such weekly payment not to exceed one pound. But where the workman is under twenty-one and earning less than £1 per week, he may recover up to 100% of his weekly earnings, the maximum payment in this case being ten shillings per week. In fixing the amount, any payments voluntarily made by the employer, and any earnings the workman may be able to make in other work, will be taken into account: and after the payment has been continued for six months the employer may compound for a lump sum.

Where death results, and the workman leaves dependants, these may recover a lump sum, which varies according to the workman's earnings, and also to the degree of the dependence, but cannot exceed £300.

Such are the most important provisions of the Act. Three points should be borne in mind. First, the injury must result from an 'accident'. A mere illness will not suffice. Secondly, the accident must arise out of and in the course of the employment. An accident happening to a servant who is, for instance, out walking on his own account, is not within the Act. Thirdly, it must be remembered that

the right to compensation only arises where the servant is prevented from earning wages. As long then as he is retained in his employment (as he generally would be if only temporarily disabled) he will of course have no claim. It follows that the only cases in which the householder is likely to be affected by the Act is where the accident is so serious as to make it necessary to dismiss the servant. Such accidents are very uncommon amongst domestic servants: but the new liabilities of the master where one has occurred are so onerous as to need consideration. A coachman or motor-driver may be thrown from his seat and permanently crippled: then even if he has only been in his place a few days he becomes entitled to a weekly payment for life: and this notwithstanding the fact that the accident may have been due to his own reckless driving or even drunkenness.

The object and result of the Act are clear. The master is put in the position of insurer to the servant: and if he considers the burden too heavy he must in turn insure himself against claims made under it. Any one, however, who contemplates insuring should procure a copy of the Act and compare it carefully with the form of policy offered, so as to be sure he is getting what he wants.[1]

Termination of the Engagement.—We now come to the question of the way in which a contract of service may be terminated, when no breach on either side has been committed. It will be remembered that when dealing with the difference between the contract of work and labour, and that of service, it was pointed out that the duration of the latter was generally measured by time alone. Now when the promise is to serve for a defined period and no more, there is plainly no difficulty. When the prescribed time expires, the contract is at an end. Contracts of this nature are not, however, common. Usually the intention of both master and servant at the inception of the service is that it shall be more

[1] See Insurance, p. 174, below.

or less permanent, and they therefore do not agree that the contract shall come to an end on a particular date. In cases such as these it is therefore very important to agree definitely beforehand what notice shall be given on either side by the party who wishes to put an end to the contract. For in the absence of such an agreement the law is not so clear or perspicuous as could be wished by the layman. The common law on the subject was formed at a time when the great majority of hiring was of agricultural labourers at yearly hiring-fairs, when the labourer bound himself for the ensuing year. Hence arose the rule that a general hiring, as it was called—that is, a hiring where no time was specified—was to be taken as a yearly hiring. Now a yearly hiring—a hiring by the year—can only be determined at the end of a year, and only then if a reasonable notice has been given.

It is easy to see that this rule of law was found to be at times unsuitable, as the nature of employments became in a high degree various. The Courts have accordingly been very ready to engraft exceptions on it, either by allowing a party to give evidence that in the particular trade it is customary to determine the hiring at any time, or by deducing from some term of the contract (such as a stipulation that payment is to be monthly or weekly) that the parties never intended that the contract should be yearly. The result has been to leave the matter in some confusion.

The simplest rule to give, though of course it is not quite accurate, is that the larger the salary the longer the notice. Three months is a very usual notice for superior clerks and similar employés. A month has become universal with domestic servants: a labourer or mechanic paid weekly may be discharged with a week's notice. At the other end of the scale is the editor of a newspaper or the highly skilled secretary, engineer, land-agent, and the like, who receive a high yearly salary and might even be entitled to a year's

notice. But perhaps enough has been said to justify the recommendation to come to a definite understanding with the employer.

Characters.—A word may be added on the subject of 'characters'. In the first place, there is, of course, no legal obligation on the master to give any character to a servant who is leaving his employment: and indeed the questions that arise in reference to them are rather for the casuist than the lawyer. It is perhaps unnecessary to say that if a character *is* given, it should be true. A *wilful* false statement in a character, if it is acted upon and results in damage, will of course give a right of action to the person who has been deceived. On the other hand, no one need in this case be afraid of stating his honest opinion, however unfavourable. In fact the law does its best to encourage frank statements, for it affords a special protection to the master, by treating statements so made as what is called 'privileged'. Generally speaking, an untrue statement made by A to B concerning C is a libel or slander, and gives C a right to recover the damage he has suffered thereby from A; and it matters nothing whether or not A was speaking what he honestly believed to be true. But there are certain exceptional cases in which this latter circumstance makes a difference. For when the relations of A to B and C are such as to lay a duty on A to speak his honest opinion to B, the law protects him from the normal consequences if he inadvertently diverges from the truth. The case of a master giving a servant's character to another is one of these cases; for here the whole object of the intending employer is to get a former master's honest opinion, and if it is given as such, it has been felt unfair that the master should suffer for a mistake. Therefore the only way in which a servant could recover damages under such circumstances would be by showing that the statement was *not* honestly made, i.e. that it was made either with knowledge of its falseness, or with a total disregard to its truth or the reverse.

Master's Liability for Injuries to Third Persons.—It remains to consider the changes in the relations of a person to the world at large that result from his becoming the employer of a servant. There are two kinds of liability which he may thereby incur.

The first is his responsibility to third persons for the consequences of wrongful acts committed by the servant in the course of his employment. It may at first sight appear harsh that any one should be held legally liable for the consequences of acts of which he may be and probably is morally innocent. But the rule is not only based on a reasonable principle, but has also a good practical justification. In principle it is the corollary of the servant's duty of obedience. For the law holds that so long as the servant is engaged on his ordinary duties it must be taken that he is acting on his master's orders. And therefore if the servant whilst so employed commits an act for which the law provides a civil remedy, the injured party may recover either against the servant himself or his employer, notwithstanding the fact that the master never authorized the particular act, or indeed even if he has expressly forbidden it.

It is important, however, to realize the limitations of this rather serious liability. In the first place the act must, as has been said, be one done in the course of the master's business. If the servant was upon his own business when he did the wrong, the sufferer has no right against the master. The distinction is often a difficult one, and has been the occasion of a large number of decisions which the reader who cares to refer to them will find not devoid of interest and even entertainment. Most of them are concerned with accidents resulting from negligent driving, when the injured person has sued the driver's employer: the classical instance being that of the omnibus driver who, whilst endeavouring to obstruct a rival omnibus, succeeded in overturning it. His employers were held liable for this damage, notwithstanding the fact that they

issued strict regulations to their servants to drive carefully and not to race with or obstruct competitors. Here it was strongly but unsuccessfully contended that the driver was not upon his master's business whilst obstructing contrary to his orders. On the other hand, when a coachman has taken out his master's carriage solely on his own affairs, in order for instance, to give his family an airing, it would be held that the master was not responsible. But the master is not (except when a statute specially so enacts) criminally liable for his servant's act[1], unless the act is, from its very nature, obviously the act of the master: as for instance where he has ordered it to be committed, or has stood by and watched it without interference.

The reader will notice that this liability is one of the marks which distinguish the contract of service from that of work and labour. If a painter engaged in painting my house let fall his paint upon a passer-by, the latter has no remedy against me; but if my housemaid's mediaeval instinct lead her, while cleaning the rooms, to empty a slop-pail out of the window, I shall be liable for the result.

Master's Liability for Servants' Orders to Tradesmen.—The other liability to third persons which may result from the employment of a servant is not, like the last, a necessary incident to the contract of service; and is only mentioned here because it often coexists with it. Whenever any person (whether a servant or not) is authorized by another to act for him in some matter, that person becomes his 'agent'. Now a servant is often made the agent of his master, and it is therefore worth while, before closing this chapter, to consider for a moment one or two of the consequences of an agency in creating liabilities on the master's part.

An agency then may be either general or special; according as the authority given is to do a certain class of acts, or

[1] i. e. the act does not make him liable to fine or imprisonment, but only to damages.

one single act only. For our present purpose it is only necessary to consider the case of an agent being empowered to enter into a contract or contracts on his principal's behalf. For such contracts, to use the legal phrase, bind the principal. Take the simplest case of a special agency. I tell my clerk to go out and order me a book. He thereupon goes to the bookseller and gives the order in my name. He has now entered into a contract on my behalf, and I am liable to the bookseller upon it. There is no difficulty so far, but when we come to general agencies the liabilities of the principal may become more serious. Let us suppose the case of a lady who employs a housekeeper to manage her household, giving her authority to order from the tradesmen the necessary food and stores. The housekeeper is now her general agent for these purposes: and all contracts for food and stores entered into by her on behalf of her mistress will be binding on the latter. The consequences to the mistress may, if the housekeeper take a liberal view of the catering, be somewhat alarming. When once any object has been bought by the housekeeper, it will be no good for the lady to refuse to pay for it on the ground that she never wanted it, or even that she forbade its being bought. As long as the article was one of the class which the housekeeper was generally empowered to buy, the lady must pay. And if she finds it necessary to make new arrangements and determines the agency by withdrawing the authority she has given, she must be careful to give notice of the fact to all tradesmen with whom the housekeeper has been in the habit of dealing, otherwise she may find herself bound by contracts made even after the agency has been put an end to.

Care is also required on the agent's part. For should he inadvertently make the contract in his own name, and omit to tell the other contractor that he is acting for a principal, he will make himself personally liable upon the contract, far though it be from his intention.

Master's Rights against Third Persons.—Such then are the liabilities to the public at large that may be incurred by a master. He may also acquire some rights which arise out of the employment. Any wrongful act done by a third person against the servant, the result of which is that the master is deprived of his services, gives to the master a right of action against the wrongdoer. This, however, and the kindred right of action for 'enticing away' a servant, are of such infrequent occurrence nowadays that the barest mention of them is sufficient.

III

BANKS

§ 1. An Account.

Whatever may have been the historical origin of banking and whatever may be the principal functions of the banker in the business world, the chief services performed by the modern English bank for the ordinary householder are to receive what money comes in to him, to provide him with petty cash as he requires it, and to defray, under his written orders, all his larger payments.

The relation between banker and 'customer' begins with an act of the customer known as 'opening an account at the bank'. Almost all banks will now allow any respectable person to open an account. All that is necessary for him is to attend at the counter of the bank, to say 'I wish to open an account here', to produce some kind of introduction sufficient to satisfy the bank as to his identity and respectability, to sign his name in the bank's signature-book, and to pay in a sum of money to 'start the account'. The bank will then give him a 'pass-book', a 'cheque-book', and perhaps a book of 'paying-in slips'. Before the cheque-book is handed over, the customer will be asked whether he prefers to have it to bearer or to order (see Cheques, below, p. 78).

Pass-book.—The pass-book is a small account book in which all transactions between the bank and the customer will be entered by the bank, payments on one side and receipts on the other, balances being struck quarterly or half-yearly. The customer or his account is said to be 'credited' with

sums paid in, and 'debited' with sums taken out. When more has been paid in than has been paid out, his account is 'in credit', and the difference between the total paid in and the total paid out is his 'credit balance', or more colloquially his 'balance at the bank'. When the bank has allowed him to take out more than he has paid in, the difference between the two totals is his 'debit balance' or 'overdraft'. The heading of the pass-book on the first two pages is now usually '——— Bank in Account with ———', and then the receipts are on the left and payments out on the right: but some banks put the customer's name first, '——— in account with ——— Bank,' and then, the point of view being different, the receipts are on the right and payments out on the left. The pass-book should be ordinarily in the custody of the customer, but must go frequently to the bank to be 'made up' i. e. to have transactions entered in it, and the customer must not himself write anything in it. It does not appear altogether beyond question whether legally the record of the pass-book is conclusive of the state of the account as against either banker or customer, though probably such is the case. It is a common-sense view that the customer is under a duty to examine his pass-book and check the entries therein, so as to be unable afterwards to complain of mistakes or perhaps payment by the bank of cheques bearing the customer's forged signature; and so all entries should be carefully checked and inquiries at once made with regard to any item which appears to be in any way in need of explanation. If the customer pays every item of cash that he receives into his account, so that it makes its appearance afterwards in the pass-book, it is clear that the counterfoils of the paying-in slips and the pass-book together will form an admirable account-book, which the customer is saved the trouble of keeping up to date himself and has only to check and audit at intervals.

Paying-in Slips.—A book of paying-in slips consists of a number of forms with counterfoils on which the customer may

enter the amounts which he pays into his account from time to time. The slips show how much is paid into the customer's account, whether silver or gold, bank-notes or country notes, cheques, money orders, dividend warrants, &c., &c., and the counterfoils form a most convenient record for checking the entries which appear under the compendious description of 'cash' in the pass-book on the different dates when money has been paid in. The slips are retained by the bank. The customer who when paying in money does not bring a slip with him, will usually be asked to fill one up or at least to sign one at the counter.

§ 2. Cheques.

Nature of a Cheque.—The banker having undertaken to hold the money of the customer at his disposal, the customer might walk into the bank and say, 'Give me £5,' and there is at least one man in England who exercises his right to do so. But it is obviously more convenient in ordinary circumstances that the orders of the customer should be written and signed by him. An unconditional order signed by a customer ordering the bank to pay such and such a sum to such and such a person is called a cheque; and by law it must bear a penny stamp. To have orders coming in couched in varying phrases and on all sorts of paper is considered inconvenient, so that it has become the practice for bankers to provide their customers with blank forms bound up with counterfoils in a 'cheque-book' containing ordinarily twenty-five or fifty forms already stamped, the cost of the stamps being duly charged against the customer's account. The form of cheque to bearer has at the top a blank space for the date; then there follows the name of the bank to whom the order is addressed, after which appears 'Pay or Bearer', and a blank line for the insertion of the amount to be paid in words; below this there is a space at the left for the amount to be repeated in figures, and on the right plenty of room for

the signature. Cheque-forms 'to order' are exactly the same except that the words 'or Order' are substituted for 'or Bearer'.

'*Bearer*' *and* '*Order*'.—The meaning of a cheque to bearer is patent on the face of it. The banker has to pay the sum named to the person named or to any one else bearing the cheque to the bank, and no further writing or signatures are necessary.

An order cheque is payable '*to* a certain person *or* to his order'. In law, this person (the payee) may either present the cheque himself and obtain payment, or he may 'endorse' the cheque by signing his name on the back, preferably just below and parallel with the perforated edge. This is the 'order' intended by the words 'or order' on the front of the cheque, and its effect is to authorize the bank to pay the cheque to any one presenting it; for a 'blank endorsement' practically turns a cheque to order into a cheque to bearer. But if the endorser chooses he may insert above his own name 'Pay *A. B.*', the name of some other person, and this 'special endorsement' prevents the cheque being paid until it is again endorsed by *A. B.*

The practice of bankers adds a requirement to these rules of law. By the law, the named payee on an order cheque (either as an original payee or as special endorsee) is entitled to be paid on presentation of it; only if he desires to transfer the cheque to another need he endorse it. But the bankers always require the named payee or endorsee, even if perfectly well known to them, to endorse it on the back.[1] In effect, the bankers treat the cheque as payable *not* 'to *A. B. or* to his order', but 'to the order of *A. B.*'.

As the banks require endorsement of order cheques even

[1] In order, it would seem, to secure the protection of § 60 of the Bills of Exchange Act, in case the person presenting for payment should not in fact be the named payee; in this event, if the endorsement is forged, the bank is freed from all liability by the section referred to. This is dealt with later.

when the named payee is 'self' and the customer presents it in person, bearer cheque-forms are more convenient for the customer when drawing cash from his bank for his own purposes. On the other hand order cheques are somewhat more satisfactory to send through the post or by messenger, inasmuch as they give more trouble to a thief.[1] But the customer in doubt whether to ask for order or bearer forms need not waste much time in narrowly considering the comparative advantages of the two forms, since by the simple process of striking a pen through 'order' or 'bearer', substituting the other word, and appending his initials to the alteration, he can convert the one form into the other.

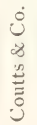
Filling up and Signature.—A cheque ought to be dated. Legally a date is not necessary. Any holder may fill in the date if omitted. But in practice an undated cheque is irregular, and a bank would not honour it. As it is payable 'on demand' it is payable at any time on or after the date it bears. There is nothing, however, to prevent a future date being inserted, and such a cheque, called a 'post-dated' cheque, although issued, will be payable only on or after the future date it bears. A cheque drawn on a Sunday is a perfectly good cheque. In writing the amounts of money, both in words and figures, the drawer should begin as much to the left as possible, and fill up blank spaces with a line of ink, so as to prevent the dishonest from altering, say, a cheque for ten pounds into one for £110, or one for six into one for sixty.

[1] It may be mentioned here that the endorsement of a tradesman on the back of a cheque sent to him in payment of an account is not a good legal receipt, though it is of course evidence that the cheque has passed through the tradesman's hands. The practice, however, which is now not uncommon, of printing a form of receipt on the back of a cheque, together with a space for the necessary penny stamp, which the payee is intended to fill up and sign, appears to be convenient to the person who is discharging a liability, but is not favoured by bankers, owing to the increased risk which they run of loss by forged or unauthorized signatures.

The signature of the customer (the drawer) should be his usual signature, and should be always in the same form. According as his fancy is to sign only the initials of his Christian name or names, or to sign in full, or one Christian name in full, so he should uniformly sign all his cheques.

Crossing.—The drawer of a cheque can, by making it a 'crossed cheque', secure that it shall not be payable in cash to any one presenting it over the counter of the drawer's bank, but shall only be payable to the bank of the payee, whether a bearer, the named payee, or an endorsee, so that before the amount can be drawn from the drawer's account the cheque must have come into the hands of some one with a bank account. As the ordinary thief is unable to keep a bank account this is some small hindrance to theft. A cheque may be crossed 'generally' or crossed 'specially'. In the former case two transverse parallel lines must be drawn across the face of the cheque, with the words '& Co.'[1] written between them, thus—

In that case the cheque is payable to *any* bank which the holder may employ to present it for payment on his behalf. If a cheque is crossed 'specially' the same two lines are drawn across the cheque, and the name of a particular bank written between them, e. g.—



In that case the cheque will be payable only to the particular bank named.

[1] The words '& Co.' are usually added, but are not necessary; the two transverse lines being all that is required.

Any one who receives a cheque not crossed by the drawer may himself cross it either 'generally' or 'specially', and achieve the same results as above.

'*Not Negotiable.*'—The protection against theft afforded by crossing is not complete, since a cheque is what is called in law a 'negotiable instrument'.

A 'negotiable instrument' is a thing which involves certain exceptional legal incidents. By the ordinary rules of law a person who sells or transfers any property to another cannot give the purchaser a better title than he himself possesses. Thus, if a thief comes to your house, and you in perfect good faith buy something he has stolen, you cannot resist the claim of the true owner to recover the thing from you. But the person who receives a 'negotiable instrument' from another, if he pays for it honestly, can acquire a better title than the former owner possessed. Thus if honestly and without any suspicion you cash a bearer cheque for a man who has stolen it, you can require to be paid its amount by the bank on which it is drawn. To put the matter in another way, as regards ordinary property, the innocent purchaser, not the true owner, suffers from the misdeeds of the thief; in the case of a 'negotiable instrument' the innocent purchaser does not suffer.

But a cheque may be marked 'not negotiable', and then it will not be, and will not possess the incidents of, a 'negotiable instrument'.

The words 'Not negotiable' should be written across the cheque parallel to the two lines of the crossing. The effect of this is not that the cheque cannot be perfectly well transferred from one holder to another, and confer on each holder the right to its value: that is to say, 'not negotiable' does *not* mean 'not transferable'. What it does mean is—'This cheque shall not have the legal incidents of a negotiable instrument.' In other words, it means—'Any holder of this cheque by endorsement or as bearer shall only have as good

a title to the money represented by it as the person had, from whom he received it.' It is obvious that in the event of the theft or loss of a cheque the fact of its being crossed 'not negotiable' provides a great security. It is also obvious that caution should be exercised in cashing a 'not negotiable' cheque for a holder who is not thoroughly known and trusted. For if, e. g., the cheque has been stolen by one of the prior holders, it is worthless to any one else.

The law makes no provision for making a cheque 'not negotiable' unless it is also crossed. Thus in effect only a cheque payable through a banker can be freed from the incidents of a 'negotiable instrument'.

Any one who receives a cheque not already made 'not negotiable' can add those words to the crossing and achieve the above result.

'*Account Payee*,' *&c.*—In practice it is a common thing to add in the crossing the words—'account payee', usually in addition to 'not negotiable'. This is an addition that has no authority in law, and its legal effect is doubtful. It amounts to an intimation by the drawer that he intends the proceeds of the cheque to be credited only to the account of the named payee. This is tantamount to an expression of desire (for it has no legal effect as a command) that the named payee shall not transfer the cheque by endorsement except only to his own banker to collect its amount for him.

This desire can be given a legal effect and be made imperative by drawing a crossed cheque in the form—'Pay *A. B.* only', and writing upon it horizontally (*not* transversely in the crossing) the words 'Not transferable'. Contrast the effect of 'Not negotiable' as described above.

From the point of view of the banker the words 'account payee' may perhaps be said to warn him to be on his guard, if any person other than the named payee presents the cheque to be cashed. The paying banker would in any case be bound to pay over the value of the cheque to the banker

whose name appeared on the special crossing, and it could scarcely be argued that he was under an obligation to see that the latter credited the money to the payee's account in the payee's own bank. Whether neglect of the warning so expressed would be equivalent to such negligence as the law would hold to give rise to an action for damages to the true owner, if the person presenting for payment proved to have a defective title, is as yet doubtful; the words seem to be on their way to acquiring a definite legal meaning, and to imposing a certain responsibility, but the exact extent of each has not hitherto been ascertained.

Manner of Endorsement.—The endorsement of a cheque (see above, p. 79) should if the payee's name be rightly spelled and written, be his usual signature. If it is wrongly spelled he should write both the wrong version and his true signature; thus T. Smith receiving a cheque payable to 'T. Smythe or order' would endorse it 'T. Smythe', and underneath would write 'T. Smith'. If the payee is described by the name of an office he holds, he should endorse it with his signature followed by the description: thus a cheque payable to 'The General Chairman of the Pickwick Club' would be endorsed, 'S. Pickwick, General Chairman of the Pickwick Club.' In other cases no precise rule can be formulated. 'Mrs. Thomas Smith' might find herself required by one bank to write 'Mary Smith, wife of Thos. Smith', while another bank would be satisfied with merely 'Mary Smith'. In a case within the knowledge of the writer, a young man, mindful of an injunction to make his endorsement correspond to the face description added 'esquire' to his name, and the bank refused to pay on the ground that the endorsement 'was not a signature'!

Banker's Authority to pay Cheque.—A cheque is, as between the customer and the banker, an authority to the banker to pay its value on behalf of the customer to the holder of it—payee, endorsee, or bearer as the case may be. This authority is

revoked (*a*) by the death of the customer, (*b*) by subsequent instructions from the customer not to pay the cheque: this is called 'stopping' a cheque.

Dishonour.—If the bank refuses for any reason to 'honour', i.e. to pay cash in return for a cheque, the holder has no right of action against the bank; his claim for money is against the drawer, or previous endorsees from whom he took it. If payment is refused it is necessary for the holder to give immediate notice of this refusal, called 'notice of dishonour', to the drawer and to each endorsee before himself.

Prompt Presentation.—A cheque should always be presented for payment as soon as possible. If not presented within a reasonable time it will probably be refused payment by the bank as a 'stale cheque'. The drawer of the cheque is, of course, still liable on it, if the bank refuses to cash it as 'stale', for a period of six years, after which time his liability will be barred by the Statute of Limitations; but, nevertheless, a drawer who can show that he is actually prejudiced by failure on the part of the holder to present in a reasonable time, will be discharged from liability to the extent of his loss.

Forgeries and Frauds.—Though it is unusual with the cheques passing through private persons' accounts, yet it may sometimes happen that a cheque comes to hand of which the drawer's name is forged. Is the bank entitled, if it has paid on the forged signature of a customer, to debit the customer with the amount? By no means; for it is the duty of a banker to know his customers' handwriting. And this duty is absolute, so that the perfection of the forgery will be no answer to the customer's complaint. It is the same if the sum for which the cheque has been drawn is fraudulently altered or added to; but in all these cases it is to be observed that the customer will have no redress if the bank is fortunate enough to be able to show that, but for the culpable negligence of the customer, the forgery would never have occurred. And

this is the reason why it is always advisable to keep cheque-books safely guarded, and never to leave room for additions either to the words or the figures when making cheques out.[1]

It might be thought that the rule would be the same with regard to a forged endorsement, but it is not so. The Bills of Exchange Act gives a special protection to bankers who pay on such a cheque 'in good faith and in the ordinary course of business' (§ 60). It is only bankers who are thus protected, and then only with regard to cheques drawn *on themselves*. All other classes of the community, and bankers too who cash such a cheque drawn *on another bank*, must bear the loss occasioned by the forgery. A bank in such a case is often doubly liable. It may not only have paid the forger, but it may have an action brought against it by the true owner of the cheque for what is called a 'conversion' of it.

It will, of course, be understood, that an order cheque with a forged endorsement on it is not a real 'negotiable instrument'; it would not become so until the right person had endorsed and so perfected it, for the forged signature is, in the eye of the law, no signature at all; and so the banker, if he cashes it, cannot avail himself of the protection which a true negotiability would give him, i. e. a good title against all the world, the true owner included.

An unauthorized signature or endorsement is on exactly the same footing as a forged one.

A banker is said to 'collect' a cheque for a customer when he takes the cheque from him solely for the purpose of getting it cashed on the customer's behalf at the bank on which it is drawn. The risks run by bankers in the

[1] The customer is said to be 'estopped' by his own negligent conduct from pursuing his rights against the banker whom the results of such negligent conduct have misled. It will be for the jury to say whether the customer's conduct has fallen below a reasonable standard of precaution having regard to all the circumstances. Mere carelessness would not discharge the bank.

performance of this duty have been recognized by the Legislature, and § 82 of the Bills of Exchange Act provides that a banker who, as agent for collection, in good faith and without negligence receives payment for a customer of a crossed cheque, shall not be under any liability to the true owner of the cheque, if it afterwards appear that the customer himself had no title, or a defective title, to it. Since 1903 the bankers had been agitating for an extension of this protection, for in that year it was decided by the House of Lords, that a banker who took, indeed, the cheque for the purpose of collecting it, but was considerate enough to credit the account of his customer with it, before the cheque was cleared (i. e. so that the customer could have drawn against it immediately), must be regarded as a purchaser of the cheque, and not an agent for collection at all; because he had in fact given value for the cheque (although in account only) before actually receiving from the paying bank its value either in credit or in cash. A short Act known as the 'Bills of Exchange (Crossed Cheques) Act' was accordingly passed in 1906 which gives bankers the protection of § 82, when they are in fact agents for collection, although they credit their customer at once without waiting for the cheque to be cleared. It will be observed that the section only applies to crossed cheques presented by customers (not strangers), and that negligence on the part of the banker destroys the protection.

§ 3. Loans and Overdrafts.

A banker is bound to honour any customer's cheques if the customer's account is in credit; should he by accident or otherwise fail to do so, an action may be brought against him for damage to the customer's credit. But if the account is not in credit, or not in sufficient credit, the cheque is in effect a request to the banker to permit the customer to overdraw; and in the absence of any previous arrangement or agreement

the banker would be perfectly justified in refusing to pay. If he does refuse he marks the cheque N/S[1] and returns it.

Loans.—But, of course, a banker deals in money as a merchant deals with goods bought and sold, and makes his profits accordingly, in the shape of interest on his loans. To have the use of his customers' money, he is willing to keep their accounts for them and render them the various convenient services which his resources and machinery enable him to do. Hence he is always willing to lend if he can, which means, in effect, if he is offered sufficiently good security. The meaning which bankers give to this phrase varies according to the place where the loan is asked for. The London customer, who is in want of money for business or other purposes, will find that his banker expresses a preference for securities which find a ready and immediate sale upon the Stock Exchange; which can, in other words, be liquidated and turned into cash without any difficulty, should the borrower make default. It is of course by no means true that London bankers will advance against nothing else, but since there is ample demand for their money, and, except in bad times, no lack of gilt-edged securities to deposit as cover for the loans they make, the borrower who brings inferior security will either be asked for a higher rate of interest or advised to seek his loan elsewhere. This, for instance, might well be the case with a City bank, but elsewhere the customer will probably find his manager more obliging. Clearly if a banker has the choice of the best securities, he will not advance against any others unless he is paid for it in the form of higher interest, but country and provincial banks, and banks not situated in the heart of London, not having so many opportunities of making use of their money, will not refuse securities by no means of the highest class, and may even, when these are offered, quote

[1] Not sufficient (balance). N/E (= no effects) and R/D (= refer to drawer) may also be marked on the cheque according to circumstances.

a rate of interest, under the stress of competition by other banks, of which no borrower need be afraid. Thus it will be seen that the question is one of the quality of securities which the customer has to offer, subject always to the tendency of competition to keep rates down. It is true that a good customer, whose account is worth something to his banker, may perhaps be able to obtain advances for a short time without any security at all,[1] but these will not be to any very great amount, and the customer's credit must be very good. Ordinarily the intending borrower will interview the bank manager, taking with him a list of such securities as he proposes to deposit, and against such of these as are approved by the manager the bank will advance, leaving probably a margin of 10 per cent. for contingencies. A borrower will either open a 'loan account' or arrange for an 'overdraft' with his bank. In the former case he will draw on the bank for the amount of the agreed loan, with which he will be debited in his loan account and then afterwards credited from time to time with the various sums paid in by way of discharge of the loan, or transferred, it may be, from the customer's account current, allowing of course for the interest on the loan which is due to the bank every half-year; or the sum which he borrows may be transferred direct to his current account. The banker will in that case possibly allow him interest on such of his loan as remains to the credit of his account current; otherwise he would be paying interest on the whole amount of the loan with which he has been credited, when in fact he cannot be said to have received any of it at all until he has drawn against it, the crediting of his account current being only a book-keeping entry, and the amount of the loan not

[1] This will even to-day be not uncommon in country districts and in small towns where the local banker is intimately acquainted with the circumstances of all his customers and has no Board of Directors or hungry shareholders to consider. But the branches of the big banks are rapidly absorbing all the private and local bankers.

yet drawn upon being still at the disposal of the bank. It is, however, not usual for a customer to ask for a loan and leave it unused on his account.

Overdrafts.—The 'loan account', though by no means confined to London, appears to be more common there than in the country. The other plan on which a bank lends money to its customers is by means of an 'overdraft' up to a fixed amount.[1] The customer, in this case, is not credited with the amount of his loan in one sum, but arranges with the bank that he may, if he wishes, overdraw his account up to a certain limit. He is not obliged to overdraw at all, but if he does, his cheques will only be honoured up to the amount agreed upon. His indebtedness to the bank may therefore vary from day to day, and he will only be paying interest on the money which he has actually borrowed and used; not, as in the case described above, on the whole amount of the loan with which his account has been credited, whether he has used it or not. If the limit agreed upon is substantial, the bank will, of course, ask for security. If it is only a small sum and the customer and his circumstances are well known, and his credit is good, it is quite possible that no security will be required, though of course the bank will continue to charge its interest. The same remarks as above apply to the rate of interest which the customer will have to pay, and the better the security the better for the customer will be the rate. The country bank will be likely to lend money more particularly upon the security of land and houses, and as these are not always realizable, the rate which

[1] The cases where a customer is permitted to overdraw for a small amount without any limit having been agreed upon, usually occur where a bank, knowing its customer well and feeling no qualms about his credit, is willing to oblige him temporarily (say for a week or so) with a small loan. But the customer will invariably receive a notification of what has occurred and a request that his account shall be as soon as possible put in funds. Otherwise, security for the loan will be required.

the customer has to pay will probably be higher. The rate quoted by the bank will vary with the current bank rate,[1] and will usually be somewhat above it, unless the bank rate is very high, when there will not be much difference between the two; and it may even be possible to borrow money at a rate even lower than the bank rate, if the securities offered are first-class and convertible into cash at any moment. So many circumstances combine to fix rates that it is impossible to lay down any general rule. $3\frac{1}{2}$ per cent., or at the least 3 per cent., will usually be the best that the customer can do when money is cheap and the securities are good. With this for a minimum he may bargain with his banker to allow him perhaps $\frac{1}{2}$ per cent. below the official rate, and he will not often get better terms than this. The borrower who offers securities which, however safe, are not easily realizable whenever money is required, will clearly have to pay more. A banker who cannot get at his assets when he wants them, necessarily runs a certain risk, and it is this risk that the higher rate of interest helps him to bear with equanimity.

Securities Pledged. Many people find in their overdrafts the most useful service which their banker can render to them, and keep their accounts continually overdrawn. The securities deposited are thus used for the purpose of supplying cash at demand (on loan, that is, from the bank), instead of their possessor being compelled to sell them in the market whenever he requires money, it may be only temporarily, and so the bank saves him a continual resort to his stockbroker according as his circumstances demand money in his pocket, or permit him safely to invest it in stocks and shares.

[1] The bank rate is nominally the minimum rate at which the Bank of England will discount the best three-months' trade bills. The unique position of the Bank in the complex structure of the money-market and the fact that all London banks keep their cash reserves there are the principal reasons why the Bank of England rate controls and governs the rate everywhere else.

It is impossible to say on what securities a bank will advance money either on loan or overdraft. The customer can only take what he has got to the bank manager and inquire whether it is approved. Stocks and shares of all kinds and mortgages are those most commonly met with. The private individual will not usually be in a position to offer bills of exchange or bills of lading, dock warrants or iron warrants, delivery orders or the like, documents representing goods of various kinds, which are thus conveniently dealt with, sold and paid for, while still on the high seas, or warehoused a hundred miles away from the bank to which they are pledged.

When shares are deposited as security they are usually transferred for a nominal consideration to the bank, but sometimes the transfers are only signed by the borrower and stamped, so that the bank may subsequently transfer the shares as and when it desires; this is a transfer 'in blank'. If, however, the Articles of Association of the company issuing the shares require a transfer to be in some particular manner, a mere transfer in blank will not be sufficient to pass the property in the shares to the bank; so that no universal rule can be laid down. The deposit of bonds to bearer and the like are usually accompanied by a memorandum setting forth the amount of the loan and security and such conditions as the bank attaches thereto. The bank will reserve the right to sell securities deposited with it, should they at any time become insufficient to cover the amount of the loan (e.g. by depreciation in the value of the shares) or should the borrower make default. The power of sale cannot, however, be exercised until the bank has demanded payment and has given notice that the securities will be sold if payment is not made.[1] A

[1] Unless, of course, one of the conditions of the loan fixes a time for repayment. The borrower has always the right to redeem his securities up to the moment of their sale, and even after notice of the bank's intention to sell has been given him. The practice of banks with regard to the exercise

borrower therefore will do well to arrange with the bank that he shall deposit further approved securities if the value of those already deposited should decline, and that the bank shall only have power to sell if he fails to do so within a reasonable time. Such agreements are very commonly made at the time the loan is negotiated, and bear a sixpenny stamp.

Loans or overdrafts on the security of lands and houses are effected either by mortgaging them, or by giving what is known as an 'equitable mortgage' upon them. A legal mortgage is by deed, and the bank in the eye of the law becomes the legal owner of the property mortgaged, subject to the right of the borrower to redeem it by the payment of his loan. A bank will usually lend up to two-thirds of the value of the mortgaged property. A more convenient form is the 'equitable mortgage', which consists merely of a deposit of the title-deeds of the property, usually with a memorandum stating the amount of the loan, and the conditions attached to it. Since the law implies, in this deposit, a contract to execute a legal mortgage when required, it is clear that without a tithe of the trouble or expense the bank has, in effect, obtained a security as good as a legal mortgage itself.

Discounts.—To discount a bill of exchange or promissory note for a customer is a form of loan, but, though one of the commonest every-day banking transactions with a customer in trade or in business, is not one of those services which a private individual is accustomed to ask his banker to perform for him. A bill of exchange may be popularly (though not quite

of their power of sale varies; often the customer is given short shrift, and finds his securities already gone when he calls to make fresh arrangements; while at other times he will be given considerable latitude. Much depends on the requirements of the bank at the moment; if it is in need of money, and especially if the securities show signs of a further decline, it will make what it can out of them and leave as small a balance as possible to get out of the customer himself.

accurately) described as a cheque drawn, not necessarily on a bank, but on any person or firm with whom the drawer has financial relations. It is usually payable at the end of a fixed period, three, six, or twelve months as the case may be. The bank takes it from the holder and 'discounts' it for him; that is, it gives him its value, less the amount of the 'discount' which he must pay for the privilege of having his money at once instead of waiting for it until the bill matures. The bank credits the customer's account with the value of the bill less the discount, and itself collects it from the drawee (who has 'accepted' the bill) when the time for payment comes. Should it be dishonoured, the customer's account will be debited with the full amount, and he himself will be left to have recourse to the 'acceptor' or other persons liable on the bill.

Guarantees.—Banks will also lend on personal security; that is to say, they will advance money on the guarantee of a person or persons other than the borrower. By entering into this contract, the guarantors, as the sureties are called, make themselves answerable to the bank for the amount of the loan, should the borrower fail to discharge his indebtedness at the proper time. The value of the guarantee naturally depends on the credit and standing of the guarantors, and if these are good the borrower will find little difficulty in inducing the banker to accept it. The loan guaranteed may be present or future, fixed or variable. It is very common for the bank to agree to allow an overdraft to a customer, if he can find two friends who will guarantee payment of whatever balance may be due to the bank on the account, at any time the bank choose to ask for it, during the continuance of the guarantee. The guarantors, of course, in such a case will be wise to state expressly in their contract the limit of liability which they are willing to assume, and for how long. A contract of guarantee must always be in writing, and signed by the persons to be charged, or their authorized agents.

A guarantor, like all other sureties, may be released from his contract by various actions on the part of the creditor bank, e. g. if the bank releases the debtor or gives him time in which to pay ; if it varies, that is to say, in any degree the exact liability which the guarantor contracted to cover. Hence most guarantee contracts as drafted by banks are very comprehensive, and expressly reserve to the bank full power to take almost any step without incurring the risk of prejudicing the guarantee itself ; and the form should therefore in all cases be very carefully scrutinized by the intending guarantor. It is to be observed that though the bank may sue one of several joint-guarantors, and recover from him the amount of the whole debt, yet such guarantor can afterwards demand from his co-guarantors proportional contributions.

The guarantee will sometimes be in the form of a promissory note, signed by the guarantor and endorsed to the bank, but a properly drafted contract is the more usual, and from the point of view of the bank, the far more efficacious method.

§ 4. Money on Deposit.

Banks invite customers to place money on 'deposit' with them in consideration of the payment of interest thereon. The money so deposited is regarded as lent to the bank, but it differs from money placed on account current in that (*a*) it is only withdrawable on giving a certain notice, or sometimes not at all before a fixed period has elapsed, and (*b*) the customer has no right to draw cheques against it. The deposit is in fact an investment (usually a temporary one) on the part of the customer, and it is an investment the value of which, if it never appreciates, at least never falls, for the bank will, of course, return to the depositor the exact value of his deposit. It therefore is everything that could be desired (although the interest is low) when a customer finds himself with a sum of

money on his hands for a short time only, or is looking about for a more profitable and permanent investment.

The banker gives a receipt for the money called a Deposit Receipt, and this will probably contain the terms of the contract between the banker and the customer, e.g. the number of days' notice required for withdrawal and the like. The receipt is not a 'negotiable instrument' like the cheque, nor is it transferable, so as to transfer the right to the deposit account.[1]

Some deposit receipts have a kind of cheque-form printed on the back, though it appears doubtful whether such forms can be regarded as possessing the legal incidents of a cheque. Possibly the bank may desire to keep it, when filled up and presented, as a receipt for the money taken out, but it may well be that the particular form issued is to be regarded as an ordinary cheque negotiable in the ordinary way. It need hardly be added that it is only the form on the back of the deposit receipt which could, in any event, be used for the purpose of drawing against the deposit. The ordinary cheque (as stated above) would not be available.

Bankers are accustomed to allow interest on deposit accounts at the rate of $1\frac{1}{2}$ per cent. below the current bank rate,[2] and as the bank rate may vary from week to week it is not possible to calculate in advance what will prove due to the customer from his deposit. A large customer may perhaps be able to make special arrangements with his bank, but small depositors will have to be content with market rates. The Bank rate is published in the newspapers every morning, and depositors can therefore learn from day to day

[1] The receipt is not always given, for the customer may give an order in writing to the bank to transfer so much from his current account to deposit. This order will appear among the old cheques which the bank sends back to the customer from time to time, and the customer's account will appear in his pass-book as debited with the amount transferred and credited twice a year with the interest on the deposit.

[2] See above, p. 91.

what their money is earning. Interest accrues from day to day, but (if the deposit is not withdrawn previously) is credited to the customer half-yearly on June 30 and December 31, and if it is not desired to take it away in cash, or have it paid in to the current account, the customer should obtain from the bank a fresh deposit note for the amount of his deposit with the addition of the interest earned. His deposit at the end of the next six months will thus have earned compound interest. If the deposit is withdrawn the bank pays the interest due to the date of withdrawal.

Another system of deposit account may be noticed. At some banks the deposit account approaches more nearly to the nature of a current account. No deposit receipt is given, but the customer receives a pass-book in which each successive sum deposited is credited to him at the time of the deposit. This pass-book remains in his possession, and may be compared to a Post Office savings' book; the money is allowed to accumulate at compound interest without the intervention of the customer, who is thus saved a great deal of trouble; and he is also permitted to draw cheques on his account, always provided that he does not make such a use of it as to transform it in effect into an account current. Should he do so he will probably find the banker treating it as such, and ceasing to allow him interest.

§ 5. Miscellaneous Services rendered by Bankers.

Of those services which all banks are now willing to perform for their customers, among the most useful are the receiving of dividends and any other moneys payable to customers, the collection of coupons, the purchase and sale of stocks and shares, the issue of circular notes and letters of credit, and the transmission of money from branch to branch.

Receipt of Dividends.—In the case of dividends notice should be given to the institution by which the dividends are paid,

on forms which the bank or the institution will supply, that the shareholder desires his dividends to be paid into his account at such and such a bank. The bank, which should also receive instructions, will then credit the customer's account with the dividend when it arrives, and the credit will appear in due course in the customer's pass-book. It is not necessary to point out how great a convenience this is to shareholders: it is also popular with dividend-paying companies, which save the cost of postage and addressing warrants.

The bank will also collect coupons attached to bonds and debentures, which the customers have put into their hands either for safe custody or as security for advances.

Purchase and Sale of Securities.—A bank will buy or sell stocks and shares for its customers, but will, of course, decline to speculate, in the ordinary sense of the word, on their behalf. The customer usually informs the bank manager what stock he desires to purchase, and the matter will then be carried through, and his account debited with the purchase money. Or he may ask his bank to invest his money for him, if he is content to trust implicitly the judgement of the bank manager in selecting an investment; but the prudent investor, by independent inquiries, will select his own investments, and give his bank particular rather than general instructions.

Payment of Subscriptions.—The direct payment of subscriptions and other payments falling due annually, is a small service but an exceedingly useful one. The customer gives the bank a written order signed by himself, directing it to pay until further notice the subscription as it falls due, and to debit his account with the amount.

Letters of Credit.—A Letter of Credit is the means adopted by a bank for the purpose of rendering it unnecessary for travellers abroad to carry about with them on their journey all the money which they will require, at great risk and personal inconvenience. A letter of credit is addressed to certain named banks or firms abroad, requesting them to advance to

the customer who presents the letter of credit up to a limit named therein. As each advance is made to the customer, the amount so advanced is endorsed on the back of the letter, and the amount of the credit (if the letter is presented subsequently to other banks named in it) is diminished by the sum so endorsed. The foreign bank will of course be acquainted with the appearance and character of the English bank's letters of credit and with the signatures of the authorized bank officials, and will adjust its account later on. The unspent portion of the letter (if any) must be repaid into the bank by returning the letter.

Circular Notes.—A Circular Note is a letter in the form of a letter of credit for a fixed sum (e. g. £5, £10, £20, and the like) addressed to certain banks whose names appear in an accompanying letter, known as a Letter of Indication, requesting them to cash the note for the customer who presents it at its face value (subject of course to the current rate of exchange between the two countries). The note will not be cashed before the letter of indication is produced. In both cases the customer's bank will have forwarded to his correspondent abroad a specimen of its customer's signature, and he will have to sign it again for the purposes of comparison by the foreign bank. It will be observed that circular notes more nearly resemble bank-notes, and are accordingly more easily convertible into cash. A circular note will very often be accepted as cash abroad, if the banks named in the letter of indication are well known, while it is unlikely that any one would advance money on the strength of the possession of a letter of credit, except the bankers to whom it is addressed. The former are therefore by far the more convenient for the ordinary traveller to take with him upon his journey.

Custody of Plate and other Valuables.—It is a not unusual practice for a banker to take charge of valuables of all kinds (such as plate, jewellery, and securities) belonging to his customers, the bank's strong-rooms being popularly regarded

as proof against the most cunning and skilful of burglars and other evil disposed persons. In the vast majority of cases this expectation is wholly justified. The banker gives a receipt for the goods, which remain in his custody until their owner appears to take them away again. But extremely interesting questions have been raised as to the exact liability with which such a transaction affects the bank. It is quite clear in the first place, that the banker does not insure the goods—that is to say, he is not responsible to their owner for every kind of loss and damage resulting to them from whatever cause arising. If then such loss or damage does occur, in what circumstances must the banker make it good? And here we enter upon a very pretty legal puzzle; for the law would regard the banker's liability as greater or less according as he took a reward for the goods entrusted to him, or was willing to look after them for nothing. Now a banker, as a matter of fact, makes no extra charge for keeping goods in safe custody; he only obliges his customer, and it seems therefore that he is what the law describes as 'a gratuitous bailee', although it has been argued (but without success) that keeping valuables is part of the ordinary business of banking, and so is one of the services which the banker promised to render in consideration of the customer lending him his money to use. There must therefore be what the law calls 'gross' negligence[1] to make the bank liable, and apart from this it is not liable even for loss or damage done through the wrongful acts of its own servants. A distinction has been drawn between cases where the goods have been by mistake, or by reason of some one else's fraud, delivered up to a person other than the owner, and in cases

[1] A learned judge once described the difference between gross and ordinary negligence as consisting only in a vituperative epithet. The phrase is, however, a convenient way of indicating that a higher standard of diligence is required from a bailee 'for reward' than from one who is 'gratuitous'.

where they have been otherwise lost or damaged. In the latter there is no remedy against the bank unless it fails to take reasonable precautions; in the former, though apart from any negligence it will not be liable on its contract as bailee, yet it will have been legally guilty of a 'conversion' of the property, and will have to make good its loss. The question might have been settled once and for all had not the Union Bank consented to pay a well-known lady on one occasion a very large sum of money for the loss of jewels which had been given up on presentment of a forged delivery order, before a Court of Justice had had the opportunity of exercising its ingenuity on the problem.

§ 6. Bankers' Charges and Payments.

It is not usual for a London bank to allow interest on credit balances on current account, but no general rule can be laid down; often the matter will be one of private arrangement between banker and customer, especially if the customer is likely to have very large balances to his credit from time to time.

Charges may also be made by the bank for keeping the account. This commission will be calculated as a rule on the different amounts with which the customer's account is debited from time to time, and will be perhaps one-eighth per cent., or possibly even one-sixteenth. Here again such commission is not usual in London, except when the account is a very small one, or the credit balance falls very low, so that the profit which the bank expects from the use of the money scarcely compensates for the keeping of the account. In such a case a London bank will charge a fixed amount (say a guinea or thirty shillings) as soon as the balance falls below the margin of usefulness to themselves; and a customer may often compound for a fixed sum, even on a large account, instead of paying a percentage.

In the north of England, beyond the London sphere of influence, it seems the usual rule to allow a small amount of interest on credit balances and to charge a commission on the transactions, but sometimes interest will be allowed although no commission is charged.

The price of cheque-books will often appear as 'stamps' in the pass-book, each cheque having to bear a penny stamp by law. 'Postage' may also be another item, and perhaps there will be stamps on transfers of shares deposited for security, memoranda of agreements with the bank, &c., and even an item for 'legal expenses'. If the customer feels doubt about these last, he should inquire from the bank as to details, and if he feels that they are not charges which he should bear persuade the manager to readjust the account.

Lastly, when he is receiving cheques drawn on banks in Scotland, he may find them credited in his pass-book, after he has paid them in for collection, less a certain sum which represents a commission charged by the bank. In such a case he may debit the person from whom he has received the cheques with the amount deducted, since the debt for which the cheque was intended to be a payment has not been fully discharged.

§ 7. Unclaimed Balances.

The relation of a banker to his customer is, if the account is in funds, that of debtor and creditor. That, perhaps, is not the description that would occur most naturally to a layman. The banker, he would say, is the man who takes care of the customer's money for him: he might, if an illumined layman, even recall the legal name of 'bailee' and apply it to the banker. But the banker does not in fact take care of the actual coins entrusted to him by the customer and return him those coins as he wants them. If the banker goes bankrupt the customer cannot say—'Such and such actual coins in the cellar belong

to me,' but merely, 'I am owed so much money.' When the customer, starting on a holiday, leaves his spoons and forks at the bank, then the banker is a bailee of the plate. But as regards ordinary banking business banker and customer are debtor and creditor, or, when the account is overdrawn, creditor and debtor.

It follows from this that money of the customer's in possession of (i. e. lent to) the bank, will not be recoverable by the customer after the lapse of six years, if, during that time he has left it absolutely untouched, and has not received an acknowledgement of any kind from the bank of the existence of a credit balance; for the loan of the money constitutes a simple debt which, in due course, the operation of the Statute of Limitations will bar. Similarly, the bank's claim to an overdraft might be barred; but payment of interest, which it is most improbable the bank would forget to demand, is always sufficient to prevent the Statute running. It is useful to remember that a bank is under no duty to inform a customer (or his legal representatives after his death) that it holds moneys belonging to him which appear to have escaped his memory.

IV

INVESTMENTS

THOSE who are personally engaged in a particular trade or manufacture can constantly find profitable investment in their own business for all the capital which they can command. But as this book does not profess to lay down rules for the conduct of trade or manufacture, the present chapter will be addressed only to those who wish to derive an income from capital without any appreciable amount of personal exertion or supervision.

§ 1. SAVINGS BANKS, PROPERTY, AND MORTGAGES.

Savings Banks.—The Post Office Savings Bank and the Trustee Savings Banks, which work under the tutelage of the State, have the advantage of giving an unchanging rate of interest and a return on demand (or almost on demand) of the amount deposited with them. But the restrictions on the total amount which can be held by a depositor, and on the amount which he can deposit in a year make this form of investment useless to all except the very smallest investors.

The savings of the ordinary investor do not require to be carried by him to a bank, but appear in the first place in the form of an increased balance at his bank. In some parts of England banks allow under certain conditions a small rate of interest on the balances standing on current account, and here the customer at once begins to derive a small income from his savings. In London and the greater part of England, however, this is not the practice, and if the customer of the

bank wishes the bank to pay him interest he must formally put any amount on which he wants to get interest 'on deposit'. (See Banking, p. 95, above.) Strictly speaking, money on deposit cannot be withdrawn without a week's or month's notice, as specified on the deposit note, but in practice the banks are usually ready to waive this condition. As the Bank Rate is seldom over 4 per cent. for any considerable period, the rate of interest on deposits (one and a half per cent. less than the Bank Rate) is seldom high enough to tempt the owner of capital to regard 'putting money on deposit' as anything but a temporary expedient to be adopted while he is searching for a more remunerative investment.

Land and Buildings.—The most obvious of all investments is perhaps the purchase of a particular parcel of property in the shape of land or houses and other buildings. The purchase may be made in various ways. The investor may treat personally with the vendor or the vendor's agent, or he may employ an estate-agent or solicitor to treat for him. If the property is offered for sale by auction he may go to bid himself or employ an agent to bid for him with instructions as to price. Except in very simple cases, as, for example, where the property is a building plot on a large estate, the intending purchaser will do well to consult a solicitor before he is committed in any way, even by bidding at an auction. If he does not, he may find himself entangled in consequence of some defect in the title to the property. In any case, he can scarcely complete the transaction without the aid of a solicitor, if he wishes to be sure that the property has been duly transferred to him. In addition to the expense of employing expert assistance in this way, the purchaser has to bear the cost of the stamp-duty on the conveyance of the property: this is one-half per cent. on the purchase money.

When the rent payable under a lease, such as an ordinary ground-rent on a building site, becomes for any reason less than the full annual value or 'rack-rent' of the property, the

lease becomes an article of value and the subject of purchase and sale. In buying such property the investor must make some difficult calculations in order to ascertain whether the running out of the lease and consequent disappearance of the property bought is sufficiently allowed for in the price. He will find his calculations much assisted by the table entitled, 'Present Value of a Lease,' given in almanacks and elsewhere. The leaseholder of such property is often called 'the landlord', and the freeholder for distinction is the 'ground-landlord'. A purchase of a freehold which is already let on long leases of this character is often spoken of as a purchase of 'ground-rents', but this is inaccurate and not very convenient.

In considering whether a particular purchase of property is a good investment, the purchaser must take into account not only the expenses of the purchase, but also the expenses which recur annually. If the property be agricultural land or houses let at rack-rents, he will be confronted by frequent demands from his tenants for repairs and improvements. If it is land already let on long leases or in perpetuity for a fixed annual payment, he will be free from such deductions from his rents, but even then it may be necessary, in order to collect the ground-rents, to employ an agent or solicitor who will charge an appreciable commission.

Mortgages.—Instead of becoming proprietor and incurring the risks and expenses of that position, an investor may prefer to lend his capital to a proprietor and have the loan secured upon the property. This can be done by means of a mortgage. The lender is the mortgagee, and the borrower the mortgagor. The mortgagor undertakes to pay the stipulated interest at regular intervals and to repay the principal after due notice given by the mortgagee. If he fails to fulfil either obligation, the property may be sold and the debt repaid from the proceeds. The business of finding mortgages for the investor is usually performed by solicitors, but often by estate-agents.

Whether agent or solicitor is employed to negotiate the mortgage, the services of a solicitor will be required to draw up the necessary deeds. The mortgagee, however, will find it much easier to put all the expenses upon the mortgagor than the purchaser of property will find it to put them on the seller. When the mortgage is once effected, the mortgagee will incur no further expense unless he finds it necessary to employ his solicitor or some other agent to collect the interest, as he probably will do if his mortgages are small and numerous.

Second mortgages are mortgages subject to the rights of persons holding an already existing mortgage. They are consequently secured only on the margin between the value of the first mortgage and that of the property, and in addition to this obvious disadvantage there are difficulties in realizing the security if the mortgage interest is not paid.

§ 2. Stock Exchange Investments.

Nature of Stocks and Shares.—Desirous of finding an investment less troublesome and expensive, the investor turns to the Stock Exchange. Stocks or shares and debentures do not, of course, differ in principle from ordinary property and mortgages, but they are for the most part much more easily dealt in, and the income derived from them is paid more punctually and without the owner being obliged to collect it. The difference arises from the fact that the things dealt with on the Stock Exchange are not, each of them, separate individual properties or separate debts secured on separate properties, but shares in large well-known properties and debts. If a man buys a farm he buys a particular farm unlike any other in the world; if he acquires a share in a great company he acquires exactly the same rights as hundreds or perhaps thousands of other persons, and he is consequently free from all trouble of identification

and examination which must be incurred by the purchaser of land and houses, or the lender of money on mortgage. Stock Exchange securities may be divided in many ways. For the present purpose they may be most conveniently dealt with in two classes, those issued by companies and those issued by national and local governments.

If a number of persons club together to buy a stock of machinery and other necessaries for working a business, the extent of their interest in the business might be indicated by stating the fraction of the whole for which each of them was responsible; it might be said, for example, that each of six persons held one-sixth, or that *A* held a half, *B* a quarter, *C*, *D*, *E*, and *F* one-sixteenth. But this is obviously a very inconvenient method when the holdings are numerous and unequal. An easy expedient often adopted is to divide the capital of the company into so large a number of 'shares' that the holding of each member may be expressed as so many shares. In the example just given, the total number of shares might be 10,000, of which *A* would hold 5,000, *B* 2,500, and *C*, *D*, *E*, and *F* 625 each. But the fact that the original subscribers invest a certain number of pounds in the company's business has suggested a different method of reckoning. The original sum invested is called 'the capital' of the company, and the extent of each member's holding is indicated by saying he has so many pounds of the company's 'stock'. In our example the capital of the company might be £50,000, and then it would be said that *A* held £25,000, *B* £12,500, and *C*, *D*, *E*, and *F* £3,125 of stock each. Another plan, which is only slightly different, is to divide the capital of the company into shares of a certain number of pounds each. Thus, in our example, the company's capital might have been divided into 10,000 shares of £5 each, and *A* would be said to hold 5,000 £5 shares, and so on.

Nominal Capital and Market Value.—Hence the divergence between nominal capital and market value which puzzles the

inexperienced and seems so simple to the initiated that they are unable to explain it. If a company is prosperous, so that the original capital earns more than the usual rate of profit, the value of its undertaking will naturally rise above the amount originally invested; if it is unprosperous, the value will fall below the amount originally invested. The difference of course applies to every fraction as well as to the whole, and consequently a £5 share may rise to £6 or more, or fall to £4 or less. Where the capital is not divided into shares it is usual to quote the price of a £100 of stock, e. g. the price of such and such a stock is £125, and such and such another stock is £80.

Ordinary and Preference.—So far we have assumed that the whole of the capital utilized by the company is of one and the same kind, 'ordinary stock' or 'ordinary shares' as the case may be. But it is often found that the easiest way of raising the whole amount required is to divide the capital into 'ordinary' and 'preference' stock or shares. To the preference stock or shares a stipulated dividend is allotted, and the ordinary stock or shares receives what is left over after this dividend has been paid. The payment of the preference dividend is usually 'contingent' on the profits of the year (or less frequently the half-year). This means that if the profits are not sufficient in any year to pay the preference dividend in full, the holders must submit to the loss and possess no claim to have it made up from the profits of subsequent years, however great. Sometimes, however, the preference stock is what is called 'cumulative'; then deficiencies in the preference dividend are cumulated or piled up till paid off, and the ordinary stock can get no dividend till the whole of the deficiencies of previous years has been made up. The 'guaranteed' stocks of British railways are cumulative preference stocks. There may be any number of preference stocks, and the order in which they rank for dividend may be expressed either by an ordinal number 'first', 'second', and

so on, or by giving the date of issue, e.g. '4 p.c. pref. 1870', '$3\frac{1}{2}$ p.c. pref. 1895'. The classes which rank first are said to be 'prior' to the others. In recent years it has become very common to subdivide the ordinary stock of a company into 'preferred ordinary' and 'deferred ordinary'. The preferred ordinary is merely another and of course less well-secured preference stock.

Debentures.—Another portion of the capital required by a company is usually raised by the issue of a kind of mortgage which can be divided into shares, called 'debenture stock' or 'debentures'. The holders of debentures or debenture stock, which are reckoned by pounds sterling and priced in just the same way as ordinary and preference shares and stocks, are entitled to their stipulated interest in priority to the preference and ordinary stockholders. The interest is cumulative, and if it is not paid the debenture-holders can, by taking the proper steps, obtain possession of the property of the company and have it utilized for their benefit. The right is not of much practical value in ordinary circumstances, since it is not very likely that property which does not yield enough to pay the debenture interest when managed by the representatives of the shareholders will do so when managed by representatives of the debenture-holders.

Debentures and debenture stock may be either 'perpetual' or redeemable at par or some other fixed price.

Limited and Unlimited Liability.—An individual conducting a business for his own profit, and even a sleeping partner in an ordinary firm, are of course liable for all debts incurred in the business, whether they exceed the value of the capital invested or the property used in the business or not. The modern shareholder in companies is seldom subject to 'unlimited liability' in the same way. The great undertakings, such as railways and docks, are 'incorporated' by special Acts of Parliament which make the companies into corporations or legal persons, and the creditor of

these bodies has no power to disintegrate them and attack the members separately. Companies formed under the 'limited liability' acts are in the same position, and must place the word 'limited' after their names to indicate the fact to their creditors. Most, if not all, chartered companies, i.e. companies which have received a charter from the Crown, also claim that the liability of their shareholders is limited, but in their case the matter is said to be not always altogether free from doubt.

In an unlimited company shareholders (but not, of course, debenture-holders) are liable to the full extent of their fortune for all the debts of the company, however great. So that if on the winding-up of a company the assets were insufficient, say, by £1,000,000 to pay its debts, 'a call' of a certain amount per share or per hundred pounds of stock would be made upon the shareholders. Some of them would be unable to pay, and then a further call to make up the deficiency would be made upon those that remained solvent, and so on till at last the whole was made up or the last shareholder driven into bankruptcy.

Where liability is limited, it must be noticed that the limitation is to the amount of the capital 'fully paid up'. It often happens that the capital of a company is paid up in stages, so that at first, say, £20 of the £100 of capital will be subscribed, and then perhaps £40 more, and then another £40. When the first instalment has been paid, the stock is said to be £20 paid up, but the shareholder's liability will be £100. Moreover, in some kinds of business, especially banking and insurance, it is supposed to be advisable to give the customers the prospect of being able to call upon the shareholders to make up something beyond the paid-up capital, so that it is a common practice for the shares or stock in such companies to be only partly paid up, although there is no intention of calling for the unpaid balance except in case of disaster. Here the investor should be careful to notice not so much the

magnitude of the liability as compared with the amount paid up as its magnitude compared with the amount he invests. Many of the institutions concerned pay very high dividends, and the price of their stock or shares consequently much exceeds the amount paid up. The liability is then less important in relation to the amount which a purchaser invests. For example, if a bank has £100 shares with £20 paid up, the liability appears at first much more alarming than that of a bank which has £50 shares with £20 paid up. In the first case the liability is £80 per share: in the second only £30. But if the first bank is paying 20 per cent. dividends on the capital paid up, and the second only 5 per cent., the price of shares in the first may be £100 and in the second only £25. So he who invests £100 will incur a liability of £80 in the first bank and of £120 in the second.

Government Securities.—Partly by accident and partly by design, government debts have for the most part become assimilated to the stocks of companies. At one time a large proportion of public debt consisted of terminable annuities: in consideration of sums advanced to it, the State undertook to pay an annuity during the life of some person, or for a given number of years, after which the annuity simply ended without any further payment by the State. But the demand for this kind of annuity being insufficient for the needs of the State, it became the practice to issue 'perpetual' annuities, which would go on for ever unless redeemed by the State repaying the amount originally raised. As the amount originally raised was of more immediate importance than the annuity, it is not surprising that instead of speaking of this amount as so many 'years' purchase' of the annuity, people spoke of the annuity as so much per cent. on the principal, and, led by the analogy from companies, called the principal 'stock'. Thus governments, when borrowing in this way, came to be spoken of as 'issuing stock', and the varying value of a given annuity was expressed

by stating that the price of £100 of stock was, say, 101 or 88. It would appear at first as if £100 of stock would always be issued in exchange for £100, the percentage of the annuity being varied to suit the state of the market. But this would lead to the creation of innumerable different stocks, each with a different rate often difficult to calculate, so that as a matter of fact governments generally find it more convenient to issue stock slightly above or below par, and the amount of stock does not exactly represent the amount borrowed. But the amount of government stock has a real importance not possessed by the stock of a company, inasmuch as it is the amount which the government will have to pay in order to redeem the debt and stop the annuity. Consequently, while government stock may be any distance under par, it cannot be very much over par unless the government has undertaken not to redeem before some stipulated period. For if the stock were much above par, it would be plain that the government might borrow on better terms and pay off the old holders with the sum thus obtained. This process is usually called 'conversion', because the old holders, threatened with repayment, prefer to acquiesce in the conversion of their holdings of stock into the new stock bearing a lower rate of interest.

Occasionally the usual practice is departed from, and a government will, when borrowing, give an undertaking to reduce at some fixed date. This was done, for example, with the War Stock, which must be redeemed in 1910, and with some of the debts of the Australian States. Occasionally, too, arrangements are made for 'drawing' by lot a certain amount of stock every year. The government is bound to redeem the drawn stock and the holder is bound to accept payment. Consequently, to have his stock drawn is advantageous to the holder when the stock is below par and disadvantageous when it is above par.

Municipal Securities.—The borrowing of municipal corporations and other local bodies is in England and most

other countries subject to central control, which secures that proper provision shall be made for the eventual extinction of the debt. Hence it is very much more usual for local bodies than for national governments to undertake to redeem at a fixed date. There are only a few English corporation stocks which are perpetual. Some retain an option of redeeming at an earlier date than the date at which redemption is compulsory.

'*Registered*,' '*Inscribed*,' *and* '*To Bearer*.'—Securities dealt in on the Stock Exchange are 'registered', 'inscribed', or 'to bearer'. The holders of registered securities have their names and holdings registered in the register of the company or institution by the registrar or secretary, and keep in their own possession a 'certificate' which certifies that they are so registered. When the security is sold a deed called a 'transfer' is executed by the seller and purchaser, and is sent to the office along with the old certificate. The register is then altered and a new certificate made out for the purchaser. The holders of inscribed securities (which include British Government and most British Corporation Stocks) have their names and holdings inscribed in a register, but have no certificate. If they sell, they have either to attend personally, get themselves identified, and sign the register, or as is much more usual, execute a power of attorney authorizing an agent to appear for them. Securities made out to bearer are not registered in any names and are transferable from hand to hand just like money or any other movable object; the only evidence of ownership is the document which the owner receives from the issuer or vendor, and it must consequently be preserved as carefully as if it were money.

Payment of Dividends and Interest.—The dividends or interest on registered or inscribed securities is usually sent to the holders by post in 'warrants', which scarcely differ from ordinary cheques. If the holder wishes he can order the company or institution to pay the dividends or interest

direct to the bank, and then he will have no further trouble.[1] The dividends or interest on securities to bearer can only be obtained by producing the document itself or parts of it called 'coupons' which are cut off as they become due. These facts make registered and inscribed stocks more convenient for the ordinary private person who wishes to avoid trouble and anxiety, though the holder may escape a good deal by entrusting the whole business to his bank.

Method of purchasing Stock Exchange Securities.—In purchasing Stock Exchange securities the investor usually acts through a stockbroker. There are 'inside' and 'outside' stockbrokers: an inside broker is one who is a member of the Stock Exchange and bound by its rules; an outside broker is any one who chooses to offer to act as an agent for persons desirous of buying or selling stocks or shares. Inside brokers are not allowed to advertise; outside brokers do so freely by circular and otherwise. The investor will be safer with the inside than the outside broker. If he desires still greater safety than can be obtained by employing a respectable broker, the investor may instruct his bank to do his business for him: the bank will then employ a broker with whom he will not come into contact.

The current prices of Stock Exchange securities may be found in the Stock Exchange daily list which may be seen in clubs, banks, and elsewhere, or obtained from a broker. The newspapers copy portions of it, some much and some little, and stockbrokers are in the habit of sending their clients monthly a booklet in which the return per cent. at current prices is worked out for the securities most commonly dealt in. Two prices will be found in one column, the first slightly smaller than the second, e. g. 80–80½ or 125–130. The first is called buyers' and the second sellers' prices, the meaning being that the 'jobbers' or members of the Stock Exchange

[1] Above, pp. 97–8.

who make it a business to deal in the particular stock hold themselves out as ready to buy at the smaller and sell at the higher. The difference, which forms the profit of the 'jobber' in his business is called the 'jobber's turn'. It is small when securities of large amount and constantly changing hands are dealt in, and large when small securities which seldom come on the market are concerned. When it is large or when, to use another expression for the same things, prices are quoted 'wide', the would-be purchaser will often be met with the reply, 'There is none of this stock on the market at present,' and then he must decide whether to wait or to select something else. Offering a higher price will seldom be effective in drawing out-of-the-way stock on to the market, but patience is often rewarded. In buying near the periods when the dividend or interest on a stock is paid, the purchaser should be careful to observe whether the purchase will be effected *cum. div.* (shortly *c.d.*) or *ex. div.* (shortly *x.d.*). If *cum. div.* he will be entitled to receive the dividend or interest either directly from the payers or from the seller if it is paid to him. If the purchase is *ex. div.* the dividend belongs to the seller.

Having settled his security and settled what price he is prepared to pay, the investor must instruct the broker to purchase. If the security is obtainable at that price, the broker effects the purchase and sends the purchaser a 'contract note' recording the transaction. In the absence of special directions the business will be done for the next 'settlement', the date of which will be given on the contract note, and the purchaser must be prepared to pay by that date.

After the settlement, if the security is of the 'registered' class, he will receive a transfer already executed by the seller, and some time after he has executed and returned this he will receive the certificate indicating that the security now 'stands in his name'. If the stock is of the 'inscribed' class he will merely receive a special form of receipt from the

seller. If security is 'to bearer' the document embodying it will be sent to him or handed to his bank or other agent as he directs.

§ 3. Comparison of Investments.

High Rates of Interest and Counterbalancing Disadvantages.—The relative advantages of the different investments are on the whole very fairly reflected in their price, and a good rule for the inexperienced investor is that he should suspect some serious deficiency in his knowledge whenever he finds any apparently great discrepancy.

Very high immediate returns may generally be explained by counterbalancing disadvantages, such as unusual trouble and expense in securing the income, extraordinary risk of cessation of income and loss of the principal, or the fact that the present income cannot continue beyond a certain period. The high rate obtainable on small mortgages, for example, is due chiefly to the fact that they are troublesome and the interest is costly to collect. The high immediate return obtainable on investments in theatres is due to the enormous risk of the particular theatre being unsuccessful. The high apparent yield of mines is partly due to the risk of the seams turning out unsatisfactory, but chiefly to the fact that every mine must be worked out sooner or later, so that the income is not permanent.

Hence the prudent adviser recommends those who have no special knowledge to be content with a small rate of interest. It does not follow, however, that the very smallest rate obtainable is the most satisfactory on the whole. The most obvious of the secure investments are in all probability less remunerative on the whole and in the long run than the investments of the second class, which give a return perhaps from a quarter to one per cent. higher. The second class are probably better on the whole than the third and subsequent

classes, because the gambling instinct leads people, taken all together, to overrate the prospects of risky undertakings. Securities which yield no dividend at all are generally over-priced: the remote prospect of getting something seems to be over-valued by, at any rate, large numbers of persons, as is shown by the success of lotteries, in which, as has often been observed, the chance of a prize is always sold for more than it is actually worth. Stocks and shares in companies which have been prosperous and have recently fallen on evil days are also commonly over-priced: people who remember the undertaking in its prosperity have difficulty in realizing the change, and underrate the chance of its being permanent and not a mere temporary fluctuation.

The investor has to take into consideration the ultimate effect of an investment upon his capital as well as the immediate return in income. When lending money to a bank or on mortgage he expects to get his money back at some future period without either increase or decrease. In purchasing property he knows that if he ever wants his money back, he must sell his property for what he can get, which may be more or less than what he gave for it. Of course if the particular property rises in value, the policy of purchase turns out the best: but supposing chances to be equal, the comparative advantage of lending and purchasing will depend upon the future change in the rate of interest, a thing very difficult to forecast. If the rate of interest falls, the mortgagee or lender finds himself obliged to take less interest on the same principal, and consequently has to submit to a loss of income, whereas he who has purchased property giving a certain annual yield finds its capital value rising with the fall of interest. If the rate of interest rises, on the other hand, the mortgagee puts out his money at the higher rate, while the purchaser of property finds its capital value depreciating.

Advice.—In seeking advice the investor should avoid the pitfall into which many fall of supposing he has found somebody

who can 'put him up to a good thing'. Things about which such information exists are seldom given away to novices. The advice of friends and even relations who recommend businesses in which they have a personal interest, and with which they profess to be intimately acquainted, should be regarded with caution, not to say suspicion. People constantly deceive themselves about the prospects of businesses in which they are concerned. As to advice from stockbrokers, it should be remembered that the average stockbroker lives on the work he does for the gamblers rather than the investors, on the clients who buy in hope of a rise and sell in hope of a fall within the next few days or weeks, rather than on those who buy purely for the sake of income or with the idea of increasing the capital in the course of years. Consequently the broker is apt to think too much of temporary fluctuations for the investor. He also is likely to have some personal bias in favour of investments which are terminable and will consequently necessitate further operations by his clients. So far as personal interest is concerned, there is much to be said for the practice of those investors who consult the local manager of their bank. But while the bank manager is not likely to have personal interests to serve and will be tolerably well-informed, there is no guarantee that he is either acute or far-seeing.

Spreading Risks.—It is a good rule not to put too many eggs in one basket. The capital of an individual, if sufficient in magnitude, may well be spread over a number of undertakings of different kinds. It is not much use to put money into twenty different railways or twenty breweries and nothing else. Something may well happen to depress all railways or all breweries. But if the investments are spread over the whole field or a large portion of it, the investor's risk of severe loss is much reduced; and he can afford to run a little more risk in regard to each investment taken separately. This reflection, however, should not lead him to think that if his

risk is sufficiently spread, he need take no care about each individual investment. Some persons have taken this view and have died with hundreds of absolutely worthless securities.

§ 4. Quasi-Investments.

Life Insurance and Life Annuities.—A person is sometimes said to invest when he effects an insurance on his life and also when he buys a life annuity. But in effecting a life insurance or buying an annuity a man acts under quite different motives from those which govern him in making an ordinary investment. If a person who insures his life or buys an annuity lives exactly as long as experience leads those who have studied the subject to believe that the average of persons like him will live, the body with which he bargains for the insurance or the annuity will (if properly managed) gain a profit at his expense as well as pay all the expenses of securing him as a customer. Consequently unless average individuals have worse opportunities of investing or less judgement in deciding between different investments than the bodies which conduct life-insurance or sell annuities, it certainly will not pay them to insure or buy annuities. A person buys an annuity or insures his life, not because he thinks that on the average people gain by it, but because he desires to be sure that he or his dependents will not suffer a great disaster. It is better, he thinks, to enter into a bargain which on the average is slightly against him and his fellows taken together rather than run the risk of overwhelming misfortune. By insuring his life he stands to lose a little if he lives out the ordinary span and a great deal if he lives much beyond it, but in return for this disadvantage he acquires the certainty that his dependents will not be left so destitute if he dies early before he has been able to save much and before he has earned as much as he would in the average working life. Similarly the man who buys a life annuity stands to

lose a little if he lives out the average span and a great deal if he dies much earlier, but in return for this disadvantage he is insured against the extremely disagreeable possibility of being left destitute if he simply arranged to spend annually a portion of his capital and then lived longer than he expected. Hence treatment of both these subjects is relegated to the following chapter.

V

INSURANCE[1]

§ 1. General Principles.

Insurance of all kinds takes the form of a contract between the insurer and the insured, and is therefore governed by the ordinary rules of law relating to contracts, subject to this, that it is in addition one of a class known to lawyers as 'contracts *uberrimae fidei*', that is, contracts in which the utmost good faith is required from either party.

The insurance of a risk of any sort involves the consideration of so many divers circumstances, of which in the nature of things the insurer cannot possibly himself have any knowledge whatever, that the law imposes upon the person who desires the protection which insurance gives, a duty of concealing nothing which might in any way affect the judgement of the insurer in accepting the risk. Hence maxims like *caveat emptor* have no place in insurance law.

The main principles, therefore, which underlie every form of insurance, whether Life, Fire, Accident, or Marine are identical for the most part[2]; and the difficulties which as a rule present themselves to those who are unfamiliar with the subject are chiefly those of practice and working. Legal

[1] Though there is no fixed rule, the word 'assurance' is very generally used in connexion with Life business and 'insurance' with that of Fire, Marine, Accident, &c.

[2] This qualification is necessary in view, for example, of the fact that fire insurance, as is explained later, is a contract 'of indemnity', while life insurance is not.

difficulties and conundrums indeed arise, and are numerous enough; but they are usually of a highly technical character, and such as it would scarcely be profitable for the layman to try and master, even if he so desired. It is proposed, therefore, in the present chapter to discuss the practical rather than the legal aspect of insurance, except in so far as the one is necessary to explain the other.

Marine insurance is the oldest form of insurance known, but, though a subject of extraordinary fascination, is not dealt with here, for the reason that it is not one which touches the immediate interests of the ordinary citizen of a modern state; whereas fire, life, and accident insurance are, it might almost be said, part of the machinery of his daily life. They are essentially creations of the modern business world, and would have been impossible in days of violent and unexpected political and social upheavals, in the absence of a well-ordered economical civilization and a well-organized system of credit and secure investments. For since the whole of modern insurance theory consists in spreading the risk of loss over as wide an area as possible, and at the same time in securing sound investments for its vast accumulations of funds, it will readily be seen how essential to its success is the stability of all those institutions with which it is connected, and how intimately it is associated with the peaceful progress of the world at large.

The risks which are now insured require more than the credit of individual insurers to protect them: and we find accordingly that the business has fallen almost entirely into the hands of great corporations, whose vast capital and complex organization alone enable them to cope with the ever-increasing volume of business which comes into their hands. Marine insurance, however, is still very largely (but by no means altogether) managed by groups of single insurers, who carry on business at 'Lloyd's', a building standing at the back of the Royal Exchange, and the lineal descendant of a

former coffee-house of that name, the resort of merchants and their insurers, called then, as now, 'underwriters,' from their custom of writing their names at the foot of the policies for which they made themselves responsible. Much general insurance is also done by members of 'Lloyd's', but in the following sections it will be the great insurance companies which will be spoken of, and whose rules and practice will be described.

§ 2. Life Insurance.

Nature of Life Insurance.—Life insurance may be described as wagering against the chances of death. A Life Insurance Office is prepared in consideration of certain payments, called premiums, usually (but not always) made annually during life, but sometimes in a single sum, to guarantee the payment of a much larger sum of money at the death of the person who has made the said payment or payments. This liability arises as soon as the contract is complete, even though the death may take place within a very short time of the beginning of the annual payments, and though the office may have received from the person insuring his life a very small proportion indeed of the sum which, under its contract, it is prepared to hand over to his executors. Such is the simplest form of life insurance, and it appears at first sight a little startling that any corporation, however wealthy, can afford to guarantee mankind against the risks of mortality on so lavish a scale. The secret is of course not a very profound one. It is based on two facts:

(i) That most men do not die young, but, on the contrary live to a respectable age; and

(ii) That money paid by way of premiums by persons insuring their lives, if invested and reinvested at compound interest year by year, will accumulate into very large sums.

Now the average number of years which at any given period of his life a man may be expected to live according

to the ordinary experience of mankind has been ascertained by a comparison of a vast number of lives, and the results for each period have been carefully tabulated; while the amount which any given sum of money will earn in a given number of years at a given rate of interest is a mere matter of arithmetic. It is by combining the results of these two tables that Life Insurance Offices are able to calculate with an extreme degree of nicety the exact amount which a man must be asked to pay year by year to the office in order that they may be able to pay his executors the particular sum of money for which he is insured, at the moment of his death whenever that may take place.[1] The office, by reason of its mortality tables, knows exactly how many deaths are on the average to be expected among its policy-holders in any given year, and so makes its calculations accordingly.[2] Life insurance is therefore based upon the law of averages.

Object of Life Insurance.—The simple form of insurance

[1] The statement in the text is not of course intended to be scientifically exact. The actuarial definition of the *single* (as opposed to the *annual*) premium is the sum of calculated results for *each* year of age up to the last age which any given person reaches in the mortality table; and this calculated result for each year consists of the sum assured (i) multiplied into the chance of dying in that year, and (ii) discounted to the age for which the premium is fixed. The single premium is the present value of the sum of the annual premiums, which are easily deduced from it.

[2] It will no doubt be objected that just as those who live less than the average number of years reap all the benefits of life insurance at a very small cost to themselves, so those whose lives pass the average limit necessarily pay as much or more than they receive. And this of course is so, the time of life at which the premiums already paid equal or exceed the amount assured varying according to the age at which the policy is taken out. This is only another way of saying that life insurance is a species of protection which has to be paid for. It must not, however, be forgotten that the 'profits' of the office (calculated in the manner explained below) are divided up among the policy-holders, and the longer a policy-holder lives the larger share of profits does he receive, so that the *net* sum which he pays the office rarely exceeds that which is eventually paid to his representatives.

indicated above is reproduced in a hundred more complicated shapes. A man may insure not only his own life but the life of any one else whose death entails a possible loss to himself, as, for instance, a creditor the life of his debtor; while the objects for which a man may insure his own life are infinite indeed. The benefits of the system are obvious to the mind of every man who either has in the present, or is likely to have in the future, other persons dependent on him, and is without the capital to provide satisfactorily for them in the event of his death. For any one who can afford to pay his annual premiums may at once convert himself into a capitalist. No one without capital of his own should think for a moment of entering upon marriage without making some form of settlement upon his wife by means of a policy of life insurance. The law now puts such a policy wholly beyond the reach of a husband's creditors, and it is perhaps the only profitable form of investment for the savings of a young professional man about to incur the responsibility of a wife and family. There is no reason why such a settlement should not now be in every case a condition precedent to matrimony with all those whose livelihood depends on their health and earning capacity, nor will a parent cause any hardship by insisting upon it.

It is not only the professional man earning a varying income who may benefit; the loss of a pension which the head of a household may enjoy, or the determination of an interest dependent on the life of another, may prove as disastrous as the death of the father or husband, and each may be guarded against by insurance. And for those to whom the purely unselfish forms of life insurance do not appeal, the offices provide what is known as 'Endowment Insurance', where the policy moneys are made payable at a given age, while the protection of insurance is given also during the period of life when a provision is most necessary, that is, before the assured has had the time for putting by an appreciable

amount. This form of insurance has greatly increased in popularity during the past twenty years, and forms a large percentage of the new business of most of the Life Offices.

Varieties of Policies.—To arrive at a decision on the form of policy required it is necessary to determine what is the exact object which it is desired to attain in taking out the policy. Does the assured, for example, desire to make provision for his wife and children or for his own old age? Is a small premium in the present of more importance to him than payment to his executors of a large sum in the future? Does he wish to pay one single premium once for all to purchase what is known as a 'Paid-up policy?' Or is he anxious to pay premiums for a limited number of years only? One may imagine any number of other cases. A man may possibly desire to protect his estate for a few years against liabilities which will then come to an end, and he will desire to protect the interests of those dependent on him for that short period only. Or again, he may wish to be enabled to make some provision for the future education, or setting out in life, of his young children. Or again for his wife by means of insurance moneys payable to her, only if she survives him. Finally, if he is seeking no one's interest but his own, it may be prudent for him to invest his money in an annuity and not in a life policy at all. These being probably the principal considerations which weigh with intending policy-holders, it will be convenient to indicate briefly the means provided by various offices to give their clients the particular protection which they may desire.

(*a*) *Policies with or without Profits.*—Every policy falls into one of these two classes. The 'profits' are that surplus which remains after the office has taken stock of all its liabilities on the various policies in force, and has set aside out of its funds a sufficient amount to cover all such liabilities actual and contingent. This surplus is divided among those policy-holders who have taken out policies 'participating', as

it is called, in the profits, usually every five years, though some offices make their distribution after a shorter period, and sometimes every year. Clearly a policy which participates in profits is more valuable than one which does not, for holders of such policies are entitled to have profits added to the amount of the policy in the form of a 'bonus' (the name given to the share of the surplus profits given to participating policy-holders), or to have the premiums which they pay proportionately reduced, or to receive the bonus in cash or in some other form. 'With-Profit' policy-holders cannot therefore be surprised at being asked to pay a larger premium than others, but so great are the advantages which accrue to such a policy in a well-managed office, that it is always advisable, if possible, to take out one, unless payment of a smaller premium at the moment happens to be infinitely more important than an increase in the sum assured some time in the future. A large number of people prefer, at each 'valuation' (as the stock-taking above referred to is called), to take their bonus in cash, but the result of allowing it rather to be added, valuation after valuation, on the compound reversionary system, to the amount of the policy moneys, is so profitable that it ought not to be difficult for policy-holders to resist the temptation every five years of receiving a lesser sum in ready money. Thus suppose the amount of the bonus is 30*s.*, or one and a half per cent. on the face-value of the policy—and many offices give more—plus (at each successive valuation) the amount of previous bonuses and bonuses upon them, it will be found that the amount of the policy, after being in existence for less than thirty years, will have increased to half as much again, while in fifty years it will have more than doubled, and this without the slightest increase in the amount of premium which was payable at the beginning. Some offices provide better bonuses than others, but the larger bonus may be obtained perhaps at the cost of an increased premium, and it is therefore not safe to

generalize. The amount of bonus is only one matter (though a very important one) out of many that have to be considered, and the intending policy-holder is therefore strongly advised to compare the premium tables and the bonus results, whether simple or compound, of such offices as he has selected, and not make his choice without carefully studying each.

(*b*) *Whole Life Policies and Endowment Insurance Policies.*—The Endowment insurance policy is on the whole a development of recent years. Its manifold advantages are so obvious that it is increasing rapidly in popularity among all classes. The principle is this:—In the case of a 'Whole Life policy' the sum assured is only payable on the death of the policy-holder, and the premiums are, in the usual course of events, payable up to his death; for though it is possible nowadays, by paying an increased rate of premium, to be relieved from the obligation of paying premiums at all after a fixed number of years, such is not the usual method. But in the case of an Endowment insurance policy the sum assured is payable when the policy-holder reaches a certain age—forty, fifty, sixty, as the case may be—at which age payment of the premium ceases likewise, and (this is most important) it is also payable should the policy-holder die before reaching that age. Clearly the risks which an office undertakes under this kind of policy are greater than those involved in a 'Whole Life' policy, and accordingly the premium will be higher, and the earlier the age at which the sum assured is to fall due the higher will the premiums be.

A man without capital of his own, who has every prospect of earning a large income during the best years of his life, will naturally be attracted by a scheme that not only insures provision for his family, should he die young, but also a large capital sum for his own old age, when his powers may be failing. Many people prefer, in any event, not to be burdened with the liability of annual premiums in the later years of their life; while it may of course come about that a man,

when he reaches the age of fifty or sixty, may have after all no family at all to provide for. On the other hand, the man whose income is not large, and who can afford to take no risks by burdening his income with the payment of premiums greater than he can afford, will not hesitate to take out a 'Whole Life' policy at as moderate a rate of premium as he can find, always bearing in mind that it is a fatal mistake to overweight oneself with insurances instead of adjusting them to one's means.

Other forms of the Endowment system are 'Double Endowment' and 'Semi-Endowment' policies, where double the sum insured becomes payable if the assured lives beyond a certain age, and only half if he dies before it respectively. Such policies are not uncommon in cases where the health of the policy-holder renders the risk of his dying early greater than would otherwise be the case.

(*c*) *Policies under the Married Women's Property Acts.*—Under these Acts it is now possible for insurances to be effected in such a way that moneys payable under them do not form part of the general estate of the assured and can in no event be claimed by creditors, and thus provision for wife or children is made certain even in the event of insolvency. The policies under the Act fall into the following three classes :—

(i) A husband can insure his life for the benefit of his wife, or his children, or both, or any of them.

(ii) A married woman can insure her husband's life for her own separate use, that is, so that the proceeds become part of her own separate estate ; or

(iii) Her own life for the benefit of her husband, or her children, or both, or any of them.

(*d*) *Different Methods of paying Premiums.*—It may be of more advantage to pay a small premium now, to insure a fixed sum of money, than to look forward to receiving a larger sum in the future, and hence the rate of premium payable is often

of the utmost importance in deciding on the form of policy to be taken out.

(i) *Discounted Bonus.*—A very low premium may be secured on the discounted bonus system by which the future bonus is devoted to reducing the amount of premium, instead of being added to the face value of the policy. This may be done in a variety of ways.

(ii) *Half Premium System.*—An example of another scheme is one by which the office advances half of the premium payable for the first few years of the policy, and allows this sum to remain as a debt secured on the policy itself. This makes possible a very low rate of premium at the beginning—a matter, it may be, of very great importance to the assured—but it is never a good thing to encumber the policy with debt if it can be avoided.

(iii) *Limited Premiums.*—Premiums may also be limited in number, in Whole Life as well as in Endowment policies; that is to say, a policy payable at death may be taken out, the premiums on which will not be payable during the whole of life, but only for a fixed term of years. The rates will naturally be greater than in the case of premiums paid until death, though probably less in most cases than those in Endowment policies taken out at the same age.

(iv) *Single Premiums.*—A policy may be purchased with a single premium. This is in effect nothing more than the investment of a sum of money at compound interest, with this additional security—that the death of the investor produces, at once, for the benefit of his estate, if he dies young, a far larger sum than the amount of his single premium would have brought him if invested and reinvested by him up to the year of his death. Such a policy is known as a *Paid-up policy*, and is an excellent way of investing small sums. A man aged thirty will be able, in most offices, to purchase a Paid-up policy of £100 payable at death for a single premium of under £50. And one well-known office will sell a Paid-up policy

for so small a sum as £25.[1] Paid-up Endowment policies can also be obtained, but of course at much higher rates.

(*e*) *Child Endowment.*—Child Endowment insurance is for the purpose of providing a sum of money in the future for the education of a child.

(i) The usual system is for the child's life to be insured at an annual premium, the sum assured becoming payable when the child reaches a certain age, usually between fourteen and twenty-one. For a larger premium an annuity, say of £100, for a given number of years, e. g. four to six, is provided, and this will probably be found the most useful form of educational endowment. If the child should die before the money becomes payable, the premiums are in most cases returned in full.

(ii) Sometimes it is the parent's life that is insured for the same purpose, and often it is provided, that if the parent dies before the child grows up, the premium payments cease, and the policy becomes a Paid-up policy (for an amount proportionate to the premiums already paid) payable when the child reaches twenty-one, or as the case may be.

(iii) Under the plan of 'Deferred Insurance' for children a child may be insured from the earliest age at an exceedingly low rate, which of course remains uniform during the whole of his life. If the child dies before twenty-one, all premiums paid are returned, but the idea is that the child, if he lives to that age, should take over the policy himself with all the benefits of the low rate of premium, and it is usually provided that, if he is unwilling to do so the policy lapses, and the office retains what has already been paid.

(*f*) *Term Policies.*—These need no explanation. A man may wish to protect himself against death or perhaps some other contingency by means of a policy for a short term of

[1] For a man aged thirty the single premium would be under £12. The small single premium system may be commended to the notice of those who, for example, desire to make a gift to children payable on their attaining their majority.

years only. This can usually be done at a very low rate, though it should be borne in mind (what indeed is obvious) that the premiums paid become altogether the property of the office at the end of the term, if the contingency insured against has not occurred.

(*g*) *Joint Life Insurance.*—Two or more lives can be insured jointly as well as a single life, though the rates are of course higher.

(i) The plan is of convenience to firms in which the death of a partner and the consequent withdrawal of his capital might dislocate business.

(ii) A husband and wife may be insured in the same manner jointly, supposing, e. g., that the two of them were dependent on a life interest in property enjoyed by one or the other only.

(iii) 'Survivorship' and 'Contingent Survivorship' policies are based on the same principle. The policy moneys become payable in the first case at the death of the last survivor of two or more persons all jointly insured ; while in the second it is payable on the death of one person only of two or more jointly insured, as in the case of a husband and wife if the latter is entirely dependent on any income of her husband's (e. g. a pension) ceasing altogether at his death. Nothing would of course be payable to the husband if the wife died first.

(*h*) *Death-Duty Policies.*—A most convenient form of modern policy is one which insures against Death-duties. The policy moneys are payable directly to the Revenue authorities and protect an Estate against the necessity of having to find at short notice large sums in payment of the duties, which may seriously cripple the resources of those who succeed to it.

It is not suggested that the above is by any means an exhaustive list of modern forms of life insurance, but it indicates the main groups into which they fall, and shows how offices are prepared to accommodate an intending policy-

holder in almost every conceivable set of circumstances, and that those who ought to make provision for the future have little or no excuse for failing to do so.

The Choice of an Office.—The form of insurance having been settled, it is next necessary to make choice of an office. There are certain points to which, as a general rule, the intending policy-holder should direct his attention; but it should always be remembered that offices often specialize in particular forms of policy, and that as the particular form required may only be obtainable in one or two offices, it may of course be desirable to run some slight risk in order to secure to the insured the peculiar benefits of the form selected. But, *ceteris paribus*, the following considerations may serve as a guide, and offices which do not come well out of the tests proposed should be approached warily. A man of common sense will probably do best by comparing carefully the prospectuses of several offices and so make his choice for himself. He should not give too much ear to the statements of agents, but should exercise his own discretion.

(i) Intending policy-holders will probably prefer to insure in a British office. It need hardly be said that there are admirable offices whose head quarters are elsewhere than in England or Scotland, but the *status* of British offices is so high, and the security they offer so unimpeachable, that it needs strong reasons for giving foreign offices a preference. It may be said generally that where there is doubt there is risk, and it should also be remembered that foreign offices are, as a rule, entirely beyond the control of English policy-holders, though legislation has been promised to remedy this anomaly.

(ii) The distinction between Mutual and 'Mixed' Offices needs a few words. A Mutual Office has no shareholders or proprietors in that sense, and all profits are divided from time to time among the policy-holders. In a 'Mixed' Office the shareholders' capital receives the interest earned upon it and

a part (usually $\frac{1}{10}$) of the periodical profits.[1] There are now no Proprietary Offices strictly so called. There is not so much difference as one might expect between the position of the two. It is possible, and indeed usual, to get quite as good terms from one as from the other, the reason being that the actual share capital of a Mixed Office is generally very small, while the dividend is as a rule limited to 10% or thereabouts.

(iii) It is, however, most important to discover whether the office is run on sound business lines. A study of the annual statement of accounts and report of an office will enable certain tests to be applied.

(*A*) The simplest perhaps is to determine the ratio of the expenses of management (including commission) to the net income derived from premiums. It will be found on comparing the different offices that this ratio varies from 4% or 5% to 25% or 30%, offices other than British being chiefly responsible for the latter figures. The average of British offices appears to be from 10% to 15%, and it is, on the whole, a good working rule to confine attention to offices which do not much exceed the latter figure; though, as was pointed out above, the peculiar advantages offered by one or another office may justify the risk. But, in any case, a large ratio of expenses can never be a sign of economical working, and it is the economical office that is usually able to give the best value to a policy-holder for his money.

The test in any event must not be regarded as an infallible one, and should be carefully applied. It should particularly be remembered that expenses incurred with respect to new business (for commission, &c.) are generally far greater than those in respect of policies which have been in force for some time. A larger proportion therefore of new premiums goes in expenses than of renewal premiums; and, as a conse-

[1] One Mixed Office pays interest on its capital plus a certain percentage upon the life premiums received during the valuation period.

quence, an office doing much new business, will have a higher ratio of expenses to premium income (that is, when the expenses in connexion with new and renewal premiums are averaged) than will an office that devotes exactly the same proportion of each class of premiums to expenses but, having less new business, has a lesser *quantum* of expenses to show in respect of it. The amount of new business therefore should always be considered carefully when the expenses test is being applied in the comparison of different offices.[1]

(*B*) Next the basis of the valuation of the office should be examined. Every office makes a periodical valuation of all its assets, and calculates the exact sum which it is necessary should be held in reserve to cover the risk which the office has undertaken in respect of each policy which it has issued. Two factors enter into this calculation: (*a*) the Mortality Table, from which the office is able to ascertain the average number of deaths among policy-holders which are to be expected in each year; (*b*) the rate of interest which it is assumed the accumulating premiums will earn so as to make them increase to the exact sum which will have to be paid to the representatives of the assured when (according to the average of the Mortality Tables) his death is to be expected. A prudent office will adopt a stringent Mortality Table and a low rate of interest; for it is clear that if it calculates upon receiving a low rate of interest only on its accumulations it will require to have in hand a larger sum of money to cover its liabilities. Many offices adopt $2\frac{1}{2}\%$ as their rate, which is certainly a very prudent policy, sufficient to content the most exacting. Others are satisfied with 3%, and it is submitted that, on the whole, this is the most satisfactory, for it is clear that all moneys added to the reserve by means of a valuation based on a lower rate are as a matter of fact

[1] The year to which the figures are applicable is also material, since the valuation of assets and the distribution of bonus add appreciably to working expenses.

(while strengthening the reserve) withdrawn from profits which would otherwise be available as bonuses for present policy-holders, and so benefit future generations at the expense of the present. 3% seems to be the happy mean, and to afford an ample margin on either side, that is to say, against liabilities on the one hand, and for the purpose of profits on the other.

(*C*) The statement of accounts will also probably show the policy of the office with regard to the investment of its funds, and what rate of interest they are actually [1] able to earn. A prudent man by exercising his common sense will easily be able to discover if the office whose circumstances he is investigating appears to manage its investments upon cautious lines, and to be anxious to combine a fair rate of interest with absolute safety. The first things to be looked for are signs of stability and security, and these should always be the assured's chief guide, even though it appears at first sight that he is sacrificing some small apparent benefit that he might gain by going elsewhere.

Natural Premium or Assessment Insurance.—Any office which issues policies the premiums on which are not constant but liable to indefinite increase is to be avoided by every one who requires and expects security for his investment. Intending policy-holders should therefore be particularly warned against companies which conduct their business on what is known as the Assessment or Natural Premium System, by which the amount of the premium is calculated every year according to the losses which the office has to meet, a method of proceeding which can only be described as living from hand to mouth with no adequate provision for the future. The fallacies which underlie their calculations have been completely demonstrated, while the security they offer

[1] The investments of a well-managed office will usually be found to earn in fact from ½ % to 1 % (and perhaps more) above the rate assumed to be earned for the purposes of the valuation.

is almost invariably wholly inadequate, for they make a point of accumulating no large reserves. It is hardly necessary to say that an office which makes a point of accumulating no reserve, is not likely to pay surrender values, and will probably, as soon as new business falls off, and a sufficient number of new lives is not brought in to keep down the average age of the general body of the assured, find itself unable to pay its claims except by making heavy calls upon the remaining policy-holders. Such has been the usual fate of offices founded on the 'assessment' idea, by whatever name they may have been called, and though their numbers have been very much diminished, some are still to be found who make this warning not wholly superfluous.

Having picked out a number of offices whose position as judged by the above tests is wholly satisfactory, we may now consider the terms which they are prepared to offer, whether generous or otherwise. And here we find a very great variety. A man may usually judge best of these for himself by comparing the prospectuses of the different companies; from these he will be able to decide which office will give him terms which will suit his pocket best; but there are one or two points to which it is always worth while for him to direct his attention, because they may become of importance at a later period.

Surrender Values.—The question of surrender values is perhaps the first of these. It may often happen that for one reason or another it may become inconvenient or impossible to 'keep the policy alive', by continuing the payment of the premiums; and what is known as the surrender value of the policy is the sum of money which the office is prepared to return to the policy-holder if he desires, for whatever reason, to 'surrender' his policy to them. The amount of this sum varies a great deal with different offices. It is calculated primarily according to the amount of premiums which have been paid when the surrender takes place; but the office

cannot return the full amount because an allowance must be made for the deduction of so much every year on account of working expenses (and the expenses during the early years of the life of a policy are always heavy), and there is also a certain amount of indirect loss to be taken into consideration.[1] Yet even so it can scarcely be said that offices are inclined towards generosity in the matter of surrender values. Many do not grant a surrender value at all for the first two or three years, but the tendency is towards a more liberal treatment of the policy-holders, and within recent years offices have been found (though not many in number) to grant a surrender value after a single year's premium has been paid. Many offices now publish the surrender values for each year of the life of a policy, or a table showing the percentage of premiums paid which they will be willing to return, and probably the time is not far distant when this will be the rule rather than the exception; with others each surrender may be a matter of special arrangement between the office and the policy-holder. Any one, therefore, proposing to insure his life should ascertain the practice of the office he has chosen with regard to surrender values, and should not hesitate, if necessary, to seek another office whose views on the subject are more liberal.

Lapse of Policies.—If the premium on a policy is not paid on or before the date on which it falls due (and offices are under no obligation to remind policy-holders of the date), or within the days of grace, usually thirty, following it, the policy 'lapses', and in the absence of any arrangement between the office and policy-holder, the latter would lose the whole of his premiums. This might often produce hardship, for the lapse may be due to circumstances over which he has no control, or to a mere temporary inability to pay his pre-

[1] It is true that henceforth the office escapes liability on the particular policy surrendered, but it is said, that on the whole, profits from surrenders do not compensate the loss in fact sustained.

miums; the offices accordingly are accustomed to make various concessions. (*a*) Most of them allow a period of twelve months or less during which the policy may be 'reinstated' on payment of arrears and interest upon them, but in this case the assured is usually regarded as taking out a fresh policy, and a fresh medical examination is often required. (*b*) Offices will often give a paid-up policy proportionate in value to the amount of premiums which have been paid. (*c*) Most of them are ready to pay a surrender value (as explained above), and will arrange to apply the surrender value to the payment of the overdue and subsequent premiums, the policy not being regarded as wholly lapsed until such payments have altogether exhausted the surrender value.

If, therefore, any doubt at all is felt as to ability to continue premiums, an office should be sought at whose hands the assured may be certain of generous treatment in the matter of lapses and surrenders.

Residence Abroad.—The office may require an additional premium if the assured proposes to travel out of England, or to reside in countries where the climate is unhealthy. It will be found that the practice of offices differs. There are to be found policies known as World-Wide policies, which entitle the holder to travel or reside in any part of the world without extra charge. Others give the same permission in consideration of a small increase on the premium. Others again increase the premium when the risk is increased, and reduce it on the risk ceasing, and it is as well to be certain on this point before concluding the insurance.

How to take out a Policy.—The taking out of the policy next claims attention. The preliminary step is usually the making of a statement in writing in answer to certain questions propounded by the office, on a form supplied by them, and known as a Proposal Form. Most offices stipulate that the statements in the proposal form are to be regarded as the basis of the contract between the office and the assured. Where

this is the case every statement made on the proposal form must be, not only substantially, but *literally* true. This is a matter of the utmost importance, because anything contained in such a proposal which is not strictly and literally correct would entitle the office, should it so desire, to treat the policy as void. It is also to be observed that any other statements made by a person desiring to insure his life, with regard to material facts of which the office ought to be in possession (even though questions concerning them do not appear on the proposal form), must be at any rate substantially true; for no man is entitled to conceal anything which may in any degree influence the office in accepting or refusing him as a policy-holder. The utmost good faith is required, and a man cannot be too careful when he fills up his proposal form. Hence he should be very careful not to allow wrong answers to be inserted by inadvertence, or by reason of false information supplied by others; for neither will afford any excuse. And he should in particular be careful to fill in the answers himself and not allow any one else, e.g. an agent of the office, to do so for him except in his presence or provided he has an opportunity for correcting them afterwards if necessary. It is quite easy for him, where he has no direct knowledge of that to which he speaks, to state in his answer that 'to the best of his belief' such and such is the case; thereby pledging no more than the fact of his belief in the circumstance and not the circumstance itself. As to age, a very important matter, a certificate of birth is conclusive, and as this can be obtained for a fee of *3s. 7d.* on application to Somerset House (which must be made personally or by sending an agent if the applicant is resident in the metropolis), it is best to produce it, and then to have the age admitted on the face of the policy from the very first. Policies called Indisputable policies are indeed obtainable. By this it is meant that, provided the premiums have been regularly paid, the office will not hold the assured answerable for misstate-

ments or misrepresentations made when the policy was issued; provided always of course that there has been no fraud. But an Indisputable policy, like other policies, will naturally contain various conditions, and its indisputability will not, it is clear, be of any assistance to the assured where these have not been fulfilled. It merely refers to 'errors, mistakes, or omissions', however important, made by, or on behalf of, the person 'effecting the insurance'. And errors in stating the age are usually excepted.

The information required in the proposal form is usually more or less the same in the various offices, e.g. name, residence and profession, and particulars as to health, with especial reference to certain stated diseases. These should be very carefully answered indeed. Information is also usually (though not always) required as to the health of various near relations, and also as to the usual medical attendant, as well as one or more friends to whom reference can be made. Most offices also desire to know if a man has endeavoured, whether successfully or not, to insure his life at other offices, and at what rates. Obviously this is a matter which might very greatly affect the decision of the office, and therefore perfect candour is necessary in answering this question, as indeed all the others. A question is often asked for whose benefit the assurance is being effected, and the policy itself invariably contains a clause stating to whom the policy-money is eventually payable. It should therefore be carefully observed that no one is entitled to insure the life of another unless he has what is known as an 'insurable interest' in the other life. This interest must be a pecuniary one, and 'must arise out of some subsisting right of property which may be prejudicially affected by the occurrence of the event assured against'.[1] So

[1] Note that it must be some subsisting right of *property*, that is in the legal sense. An undergraduate for example would have in the eye of the law no insurable interest in the life of a philanthropist who was paying for his University education; nor would a servant in the

a creditor has an interest in the life of his debtor to the amount of his debt; a surety in the life of him whose surety he is, and the like. Of course it need hardly be said that a man has an insurable interest in his own life up to any amount, and the policy money in this case would usually be expressed to be payable to his 'executors, administrators, or assigns'; though not necessarily, as for instance in the case of policies taken out under the Married Women's Property Act. Note that the insurable interest need only exist at the date of taking out the policy, and the fact that it may have ceased to exist before the policy becomes a claim makes no difference whatever. For example, the debtor may have paid his debt, but the creditor, if the premiums have been kept up, would be none the less entitled to the policy money on the death of the debtor. This is sometimes expressed by saying that Life Insurance (unlike Fire and Marine Insurance) is not a form of indemnity: that is, it is a contract for the payment of a fixed sum on the happening of the contingency insured against without regard for the actual loss suffered by those to whom the policy-moneys are payable.

Medical Examination.—A medical examination is in most cases a condition precedent to the issue of a policy. This examination is usually by the company's own medical officer, and is in addition to such information as the office has been able to derive from the medical man who has been mentioned in the proposal form. As most offices require this examination, the rates advertised in prospectuses are those payable by persons who are considered by the offices' own doctors to be what are called 'good lives'. Some offices will take no other lives, but this is unusual, for the majority are prepared to accept at increased rates, persons who do not enjoy good health, or whose antecedents are such as to render the risk abnormal. Any man who is not regarded as a first-class life

life of his master, if he could be dismissed at any time. The question is often difficult to decide and has given rise to much litigation.

would be well-advised in making the most careful inquiries of different offices before finally insuring in one or the other, in order to see which, in the circumstances, will grant him the best terms. For it often happens that such a life will be by some offices accepted for one form of insurance, but not for another, and it should be particularly noted that rejection by one office by no means implies rejection by all, though of course a previous rejection should always be declared with full particulars, when application is made for an insurance elsewhere. Those who are desirous of dispensing with a medical examination altogether will find offices ready to insure on these terms, though, as may be easily supposed, such offices by no means bind themselves to issue a policy to any one who chooses to apply; and although a medical examination is dispensed with, yet full information as to the state of health of the would-be assured is required, together with the usual references to his medical man. Undoubtedly such an office runs a slight additional risk, and this may possibly, though not necessarily, be reflected in the rates of premiums charged, or bonuses earned, and the point should be borne in mind by good lives who are thinking of insuring there, and a careful comparison made with the rates and other advantages provided by offices which adopt a more stringent rule.

The Issue of the Policy and the Conditions therein.—The medical examination, if satisfactory, concludes the preliminary negotiations, and on receipt of the premium, the office will be prepared to issue a policy to the intending policy-holder. He, of course, will have carefully examined the form of policy which is about to be issued to him before he makes his proposal. Most offices print a specimen form of policy in their prospectuses, and all are always willing to provide applicants with the fullest information on the matter. Most of the usual conditions have been glanced at already, when the choice of an office was being discussed, because conditions vary with offices, and some may be more favourable to the assured

than others. The conditions deal with such matters as lapse and revival, surrender values, residence in different parts of the world, methods of payment, &c. The modern policy of life, unlike that of marine, insurance is a simple document not at all difficult to understand; such conditions, however, as it contains should be most carefully noted and invariably complied with, since the continued existence of the policy will depend upon their fulfilment, and, as was pointed out above, it should never be forgotten that the basis of the whole contract rests upon the answers contained in the proposal form, and the policy itself stands or falls by their correctness or falsity.

It is only when the first premium is paid that the policy comes into existence and the office assumes liability,[1] and therefore until the policy has been issued, even after the proposal has been sent in and accepted, any further circumstance which occurs to, or comes to the knowledge of, the assured and might have affected the decision of the office, must be communicated to it. The utmost good faith is required in contracts of this kind, and perfect openness and frankness are an absolute necessity on the part of every person who desires to take out a policy of unquestionable validity.

The Policy as Property.—When the first premium has been paid the policy is 'alive', subject to the regular payment of premiums yearly, half-yearly, quarterly, or monthly, as the case may be, and represents in effect an irrevocable promise on the part of the office to pay a fixed sum of money on the happening of a certain contingency. It may therefore be regarded as a species of personal property which may be dealt with in various ways. The most important of these are

[1] Receipt of a premium by an agent is not a receipt by the office if in fact the agent is not authorized to receive premiums on behalf of the office. An agent has usually no authority at all to accept a proposal for a policy. No premiums or any part of them are returnable when the risk has once attached.

assignment, either by way of mortgage or sale, settlement, and security for loans made by the office issuing it and otherwise.

Assignment.—A policy may be assigned, that is to say, it may be transferred by its possessor to another person or persons, and in that case (provided notice is given to the office) the policy moneys will be paid, when they become due, to the assignee and not to the original assured or his representatives.[1] It is most important to remember that notice in writing to the office is essential to perfect the title of the assignee and forms for the purpose will usually be provided. An assignment is made by deed, which will require a witness to the signature of the assignor, as well as a stamp to the proper amount.

An assignment may be absolute, as when a policy is sold; or it may be by way of mortgage to secure a loan. A mere *deposit* (without assignment) of the policy does not create a mortgage, and the office would not pay over the policy moneys to the depositee.[2] Every mortgagee has a right to sell his security if the borrower makes default after notice that he is required to discharge his indebtedness, and in certain circumstances he may 'foreclose'; that is, put an end altogether to the rights of the borrower in the security and become the owner of it himself.

Perhaps a policy is mortgaged twice over to different mortgagees. In such a case the mortgagee who first gives notice to the office of his assignment will have priority, even though his mortgage is subsequent in time to the other; and notice should therefore always be given at the earliest moment.

A mortgagee who pays premiums on a policy or the mortgagor failing to do so will have a lien on the policy for such premiums with interest and (though his original loan be paid off) may hold the policy until he is recouped.

[1] Bonuses follow the principal policy moneys.

[2] Though not creating a mortgage, such a deposit will give a lien.

An assignee is said to take 'subject to equities'; that is, all defences open to the office in a claim made against them by the original assured are equally valid against the assignee —fraud, non-disclosure, misrepresentation, and the like. But an office cannot after notice of assignment debit the policy with unpaid premiums as described above; that is, if the assignor remains responsible for the payment of premiums, for they must not after notice encumber the policy adversely to the assignee's interest.

Settlement.—A settlement of policies is effected by assigning them in the manner described above to trustees on trust for the purposes of the settlement; and in this way a wife and future children may best be provided for on marriage. The policy takes the place of a sum of money in cash or securities, and so far as provision for others is concerned (at the settlor's death), is equally efficacious so long as the premiums are regularly paid.[1] In the case of policies under the Married Women's Property Acts,[2] the assured may appoint trustees either by the policy itself or by a separate memorandum; and if no such appointment is made, then the assured himself (or his representatives after his death) is to be considered as trustee for those for whose benefit the policy is expressed to be issued; the policy moneys (as already pointed out) cannot be touched by creditors of the assured in any event.

A covenant in a settlement to settle after-acquired property on the same trusts will usually include policies of insurance subsequently taken out.

Loans on Policies.—Most offices are prepared to lend money on the security of the policy. The amount which they are prepared to lend does not depend on the sum

[1] The Court will often sanction the sale or surrender of a policy, where the settlor is wholly unable to maintain it, and it appears that such sale or surrender would be for the benefit of the children for whom the policy makes provision.

[2] § 11 of the Act of 1882.

assured, but on the surrender value of the policy at the time when the loan is made, and if the assured regards it as probable that he will, at some time or other, require to raise money on his policy, he will of course be careful to choose an office whose surrender values are on a generous scale. The loans are usually made up to about 90 % of the surrender value.

Policies as Collateral Security for Loans.—Offices will also in many cases be willing to lend money on personal security only, provided the borrower is prepared (besides obtaining a guarantee of two of his friends) to take out a policy on his own life, for a sum considerably in excess of the amount of the loan. Such loans are usually repayable within a certain fixed period by instalments, and the object of the policy is to protect the office against loss, should the borrower die before the loan is liquidated and his estate prove unable to make up the deficiency.[1]

Income Tax.—Life insurance is regarded with favour by the Legislature as a means of thrift, and sums of money paid by way of premium may be deducted in calculating the amount of income on which income tax is payable. 'The allowance is only authorized in respect of premiums paid on the claimant's own life or on that of his wife, and does not extend to premiums paid to any foreign insurance company . . .; it is limited to an expenditure on annual premiums not exceeding one-sixth of the claimant's net personal income from all sources, and has not the effect of granting exemption or abatement where the total income is thereby reduced below the respective limits.'

[1] On the loan being paid off the policy will become the absolute property of the borrower, if, that is, he is willing to keep up the premiums. Otherwise, he will surrender to the office, receiving from them no more than the surrender value of the policy; unless, as is very often the case, it has already been assigned to the office, the assignor (the borrower) covenanting to keep up the premiums.

Payment of the Policy Moneys.—We have now dealt with the principal points which arise at the beginning and during the life of a policy, and it only remains to see what steps must be taken when the policy moneys become due.

Should they become due during the lifetime of the assured (as in the case of Endowment policies) clearly very little difficulty can arise, for the assured is always in existence to prove his title; and if the policy has been assigned, the office will already have received notice thereof. If, however, the money becomes payable at his death, the office will naturally require further information, and is often in consequence the subject of criticism at the hands of those who ought to know or realize that the absence of very simple precautions would continually lay an office open to frauds of a very serious kind. It is best for a person who claims the money due under a policy to write to the office giving notice of the death of the assured, and inquiring what documents or papers are necessary for his claim to be admitted. He should of course indicate the nature of his claim, i. e. whether under the will of the deceased as assignee, next-of-kin, or the like. Generally speaking, in a simple case the certificate of death, evidence of identity, and probate of the will of the deceased will be sufficient. It will usually be found that any delays which may be caused are the fault of the person making the claim, for the great majority of offices are now willing to pay almost immediately, and very rarely adopt other than a generous attitude, even though by standing on their strict legal rights it would be possible for them to do so.

The principal points on which an intending policy-holder is likely to require information, and perhaps guidance, have now been discussed; but it has not of course been possible to deal exhaustively with them. Further information can best be sought from the offices themselves, which are always ready to make suggestions for the purpose of effecting the particular objects which their clients have in view. A man will of

course use his own judgement also, and investigate all suggestions put before him.

§ 3. Life Annuities.

The purchaser of a life annuity is influenced by a very different motive from that which governs the man who effects a life insurance. A man who insures his life does so to provide something for those whom he leaves behind him; a man who buys a life annuity does so because he wishes to spend his capital as well as his income before he dies. But nevertheless the annuitant is insuring against a certain risk, the risk of living too long. Therefore there is nothing illogical in dealing with annuities as a form of insurance in a chapter on insurance. Moreover, the plan is practically convenient inasmuch as insurance companies are the bodies from which annuities are ordinarily bought.

Ordinary or Immediate Annuities.—The ordinary or immediate life annuity is a fixed sum of money paid every year to the annuitant until his death whenever that may occur, in return for a single sum paid by him to the office. This sum will vary with the age of the person buying the annuity, growing smaller with advancing age. Tables of prices are given in the companies' prospectuses and in the *Post Office Guide.*

In view of the fact that an annuity is very often the sole means of support to those to whom it is paid, too much stress cannot be laid on the importance of choosing an office whose financial position is absolutely unassailable from every standpoint; and therefore a smaller annuity is preferable to the least suspicion of risk.

Deferred Annuities.—A development is to be found in the modern system of Deferred Annuities. These are annuities which do not begin to be paid until some future date, and are purchased either by annual premiums until that date, or by a single premium paid down. Should death occur before payment of the annuity becomes due, most offices return no

premiums, and are thus enabled to offer larger annuities than they could do otherwise; but it may be stipulated that premiums shall be returnable, and in that case the annuity will be smaller, if and when it falls due, for the office undertakes a greater liability. The system appears to be of the greatest advantage to solitary wage-earners, and is peculiarly suitable to women workers.

Life Policies paid as Annuities, and other Combinations.—Many offices now combine life and endowment insurance with payment of annuities, charging appropriate rates. For instance, an office will insure a man for so much, and instead of paying over the sum at his death will retain it, for say twenty years, paying an annuity at the rate of 4% or 5% to his widow, and finally paying over the sum itself in cash. There are many varieties of this plan. The assured may take an annuity himself after a fixed period, and still have a sum of cash to dispose of at his death. There may be many other options open to him; there is even such a thing to be found as an eight-option policy; but the principle remains the same in each, and is an admirable method of securing an income in old age without, at the same time, depriving dependants of assistance which it may be a duty to give.

Joint Life Annuities.—Like an ordinary life policy, so an annuity can be purchased to run for two lives jointly, either to cease when one of the persons assured dies, or to continue till both are dead.

§ 4. Accident Insurance.

The legal incidents of Accident policies, so far as they are policies of insurance against certain contingencies, are analogous to those of Life policies, and such variations as there may be between them are due rather to the subject-matter of the contract than to the application of different principles. Candour, a full disclosure of all material facts, and the possession of an insurable interest by the insurer, are as necessary to

the validity of an Accident as of a Life policy. Yet such points of difference as there are become important in practice, and it is proposed to give a brief account of these for the benefit of persons intending to insure.

Insurance against Disablement from Accident and certain Specified Diseases.—A modern accident policy usually insures against death, but against death from 'accidents' only, and not from other causes, and at the same time guarantees the assured a fixed sum of money, should he be totally or partially disabled by one of the accidents insured against, as well as a certain sum per week if he is prevented from performing his daily duties from the same cause.

The consideration for such a policy is the premium, which will vary according to the age and occupation of the assured, to name but two of the points on which the office will require the fullest and most detailed information before it quotes a rate.[1] The usual classification of risks is into Ordinary, Extra, and Hazardous, according to the employment of the assured. The forms of policy are also numerous, and at the present time embrace not only accident but almost every ill that flesh is heir to. The following list taken from the prospectus of a modern office will serve as an indication of the kind of risks which an Accident policy may now be taken out to cover:—

'Insurance against Accidents of every kind, with or without allowances during entire or partial disablement.

'Allowance for disablement arising from Typhoid, Typhus, or Scarlet Fever, Small-pox, Measles, Diphtheria, Dia-

[1] If the habits of the assured or his physical condition do not appear satisfactory, it is probable that the risk will be declined rather than accepted at an increased rate of premium; it is also very usual for an office to refuse proposals from persons above a certain age (say 60 years), at any rate if they then come to the office for the first time.

Premiums will of course vary also with the amount insured and with the risks covered. It is a usual form of policy for an office to pay a certain fixed sum equal to the payment at death for the loss of two limbs

betes, Cholera, Tetanus, Pneumonia, Pleurisy, Erysipelas, Carbuncle, Appendicitis, Bubonic Plague, Dysentery, Malaria, Chicken-pox, Perityphlitis, Acute Peritonitis, Glanders, Hydrophobia, Septicaemia, Pyaemia, Tetany, Mumps, Shingles, Whooping Cough, Quinsy (suppurative), Meningitis, Anthrax (Malignant Pustule), Landry's Paralysis, Facial Paralysis, Aneurism, Acute Laryngitis (non-tubercular), Ptomaine poisoning, Sun-stroke, Hydrocephalus, Locomotor Ataxia or Suppurative Pericarditis.

'Insurance against fatal accidents on a voyage.'

Hence the would-be assured must make up his mind what (if any) are the peculiar risks to which his own profession or employment is exposed, and endeavour to cover them in particular, as well as the risks in general which may befall every man; but he will probably find the modern accident policy wide enough for all ordinary circumstances.

Choice of an Office.—As to the choice of an office, he may be advised to seek an old-established office with a good reputation and with ample and well-invested reserves; matters which he may easily discover for himself by making inquiries from persons other than insurance agents. A ratio of expenses to premium income of about 25 %, is a sign of good management. The prompt and liberal settlement of claims, combined with a business-like administration, gives the best claim to confidence, and it is not difficult to discriminate the sheep from the goats.

Proposal.—A proposal will first of all be made to the office (as in life insurance) on a proposal form, after all the questions have been filled up with absolute and literal accuracy, however searching and inquisitive they may appear, and if (as is usually the case) the declarations in the proposal form are stated to form the basis of the contract between the parties,

and half that amount for the loss of one. In cases of permanent total disablement (otherwise than by loss of limbs) the assured is often guaranteed an annuity for the rest of his life.

it cannot again be too strongly pointed out that *substantial* accuracy alone is not sufficient, and that, in a word, everything that has been said about life insurance proposals applies with equal force. If the proposer is in any doubt, he should give too much rather than too little information, and may always safeguard himself by pledging his 'belief' only.

Limited Period of Insurance.—Insurance against personal injuries caused by accident (like life insurance) is not a contract of indemnity; that is, the money paid under the policy is a fixed sum, and not the exact and ascertained amount of the loss or injury actually incurred. But it differs from life insurance in imposing no obligation on the office to continue the policy through life, provided the premiums be paid; with this important result, that each policy received forms a *new* contract, and not merely a continuation of the old. The ordinary accident policy is usually for one year only, and can then be renewed or terminated at the option of either party; but, should it be renewed, the assured is under a fresh duty to disclose all circumstances which have occurred since the last proposal was accepted, which in any way alter the character of the risk which the office undertook to cover. So, if any of his then answers are now incorrect he must hasten to inform the office, that they may (if they desire) alter the conditions on which they issued the policy, by increasing the premiums, and so on; and failure to do this may entitle the office to refuse to pay claims when made later on.

Conditions and Exceptions.—The forms of policy vary not only with the risks covered but with the office which issues them. They should be most carefully examined by the assured, that he may see whether those risks are included, against which he particularly desires protection. Most policies will contain certain conditions and certain exceptions, which do not vary very much. Among the former will be a requirement that notice of an accident on which a claim is made shall be given within a certain period; that the sum insured in case of death

will not be paid unless the death shall occur within (say) three months after the accident; that the number of weeks during which a weekly allowance will be paid shall not exceed twenty-six or (in many cases) fifty-two ; and that all disputes shall be referred to arbitration. This last condition debars a policy-holder from suing in a court of justice, and this is sometimes thought to be a hardship by those who are under the impression that the offices are always on the look-out for excuses to avoid payment under their policies. As a matter of fact very few cases end in arbitration or other proceedings, and the offices are often willing to compromise claims which they might without difficulty resist. A reputation for prompt and liberal settlements is a valuable business asset. Disputes of course are bound to arise sometimes and will always be costly, whether decided by an arbitrator or a judge; the more reason therefore for the assured to be on the safe side and to ascertain, so far as he can, the exact protection which the policy affords him before paying his first premium. Another condition will usually deal with renewals of the policy. It is customary to give the assured fifteen days' grace after the policy has run out, and accidents occurring within that period will be covered, provided that before it expires he tenders to the office the premium for a further year.[1]

Among the common 'exceptions' in an accident policy are those which release the office from liability if the assured meets with an accident or with death by his own hand or through poison, drunkenness, surgical operations[2] and their results, or exposure of himself to unnecessary risk or danger.

[1] Of course, the different offices have their own schemes ; and Accident insurance may now be combined not only with Life insurance but with Endowment insurance also, and even with Deferred Annuity insurance. The reader is referred to the prospectuses of the offices.

[2] In the case of death following an operation rendered necessary by a disease insured against, the office would not be liable if death were the result of the operation *alone*, a fact which it would be difficult to prove, unless the surgeon were a bungler.

It would seem that ordinary negligence on the part of the assured himself or of third persons does not come within the last exception; but it will be, of course, a question in each case at which point the negligence ceases to be 'ordinary'.

Notice of a claim by reason of an accident should be given at the earliest possible date, for the office will often desire the assured to be seen by one of their own medical men. The policy will very probably contain words to the effect that the office will pay claims subject to the proof of the accident or injury being satisfactory to the Directors, and for this purpose it is obvious that a doctor's certificate is essential whenever it can be obtained. On the other hand, the Directors must exercise their discretion reasonably, and are not entitled to say that the proof is unsatisfactory to them, when in fact it ought not to be.

Definition of 'Accident'.—The disputes which arise over accident policies are usually in connexion with the exceptions, or with the question whether in fact the injury complained of was caused by an 'accident' within the meaning of the policy. 'Accident' has never yet been satisfactorily defined by the courts. A common phrase in a policy is 'accidental and external violence operating on the person of the assured', or words to that effect. 'External' is important, and (unless the policy is against sickness also) would exclude most diseases unless (such as lock-jaw or some kinds of blood-poisoning) directly attributable to external injury. 'Accident' has also been said to imply something 'fortuitous and unexpected'; but the difficulties of an exhaustive definition are so great that it is quite impossible to find one which covers all risks which are likely to befall a man; and, if disputes arise, the assured can only pray that his case may fall on one side of the line rather than the other, and that the arbitrator may be well disposed.[1] He will scarcely have the

[1] The word 'disablement' has also given rise to difficulties. It is sometimes provided in policies that the assured shall in no case be con-

barren satisfaction (should he lose) of knowing that he has contributed to the elucidation of the law; for the construction of what is often an ill-drawn document can hardly be so dignified. The utmost that can be done is for the policy-holder to read his policy with the greatest care, and insist on the office making quite clear beforehand any points which seem to raise possible difficulties. The general rule of law, where the results of an accident are the subject of dispute, is that only the immediate and not the more remote cause of the injury is to be considered. The rule is as old as Lord Bacon, whose expression of it is often quoted: 'It were infinite for the law to judge the causes of causes and their impulsions one of another; therefore it contenteth itself with the immediate cause; and judgeth of acts by that without looking to any further degree' (*Maxims of the Law*, Reg. 1); and though it may at times operate harshly towards an assured, and can hardly be said to be scientific, yet some such limitation is inevitable in practice, and in particular cases where it may be foreseen that hardship might arise, can often be rendered innocuous by apt words in the policy.

§ 5. Fire Insurance.

Differences between Fire and Life Insurance.—There is one profound difference between the contracts of fire and life insurance, which has already been referred to, namely that the former is a 'contract of indemnity', while the latter is not. By this is meant that the fire insurance office pays to the assured, on whose premises a fire has taken place, a sum of money sufficient only to cover the loss caused thereby, although the whole premises may be insured for two or three times as much. In life insurance there can of course be no such

sidered disabled unless his accident (or as the case may be) confines him to the house; this narrow definition is not fair to the assured, and a more generous one is to be met with in the more modern form of policy.

thing as a partial loss, and in the event of what corresponds to a total loss (of the death, that is, of the assured, or the maturing of an endowment policy), a life office pays over the face value of the policy: yet a man may have his whole house with all its contents destroyed by fire, without receiving from the office which has insured him the full amount for which he was insured; if, that is to say, the value of the house and its contents *at the date of the fire* was not in fact as great as the sum for which the policy had been taken out: in other words, the assured is indemnified against his actual loss only, and is not permitted to make a profit by his misfortunes. Were this principle relaxed, the door would clearly be open to innumerable frauds; whereas it is in the highest degree unlikely that a man will kill or seriously maim himself in order to cheat a life or accident office, and so perhaps benefit persons who will only enjoy the proceeds of his fraud after he is dead.[1]

There are, indeed, policies known as 'valued policies', in which the value of the premises or goods insured is stated on the face of the policy, and in the event of a *total* loss, the office agrees to regard the stated value as conclusive against itself, whatever may be the value in fact. Reference will be made below to this form of policy, which, it may be mentioned, is rarely met with in this country.

The indemnity afforded by the fire insurance policy is a *personal* indemnity, and therefore it will be found that the rules as to the assignment of fire policies are altogether different from those which have been already described in the case of life

[1] Instances are however not unknown, and probably over minor accidents the companies pay a large sum every year for which they are in no way liable. There have been several cases of alleged drowning, in which the very just suspicions of an office have deprived assignees and the like of policy moneys to which they laid claim. And in 1905 a jury in South Wales (after one disagreement) found that a man had deliberately sat upon a railway line and allowed his legs to be cut off in order to claim the proceeds of a disablement policy.

insurance. If I insure my house against fire, and afterwards sell it, the purchaser cannot claim the benefit of the policy which I have taken out; and, since my insurable interest in the house has passed with the sale, I could not myself enforce the policy if the house should be burnt down: in other words, what I have insured is *my interest in the house*, though it is convenient to speak of insuring the house itself; and the protection afforded by the policy would only follow my interest if the office expressly permitted it to do so in the contract itself, or assented to the assignment when made.

Lastly, the doctrine of 'subrogation' assumes much greater importance in the case of a contract of indemnity. An office which has paid a loss on a fire is entitled to stand in the shoes of the assured whose loss it has made good, and to claim that it shall have the benefit of anything which may afterwards occur to minimize or get rid of the loss which the assured has suffered. Thus in one case, familiar to all lawyers, a man suffered a loss by fire owing to the negligence of the Corporation of the town in which he lived. The office which insured him paid him for the loss, and some time afterwards the Corporation also paid him a sum of money by way of compensation; it was held that the office was entitled to have this sum handed over to it, and that the owner of the house was not allowed to be paid twice over for the damage which the fire had caused. In the same way, an office which has paid a total fire loss is entitled to retain such property as may be salvaged, unless the assured is willing to allow his claim to be proportionately abated.

The other differences between these two forms of insurance are mainly those which necessarily arise by reason of the wholly distinct nature of the subject-matter of the two contracts, and are also due to variations in practice and working. Fire policies are almost always of a single year's duration to begin with: and the infinite variety of circumstances which an office must take into consideration in fixing its rate of

premium make it impossible to regard fire insurance as an exact science in the same sense as life insurance. Statistics sufficiently full and detailed to form the basis of a truly scientific classification of risks and fixing of premiums are not available, although the Committee representing what are known as the Tariff Offices is continually revising rates and risks in the light of accumulated experience. Other considerations most difficult to estimate also tend to complicate the problem, such as what is known as the 'moral hazard' (i. e. the risk of fraud which can never be wholly excluded). Yet empirical as are the decisions arrived at (and that they are no more can be ascertained from the fluctuations in the percentage of profit made by the offices each year, and not seldom from their percentage of loss), they appear to afford satisfaction to the community at large, though of those who are assured there are many who suffer from increased rates by reason of the carelessness either of themselves or their neighbourhoods, or of the inherent liability to fire in the district to which they belong,[1] or the materials or buildings which they are trying to protect.

Choice of an Office.—The signs of a sound financial position to be looked for in choosing a fire office are (i) the ratio of expenses to premium income, (ii) the size of the reserve. The ratio in a good and economical office appears to be about 33 per cent.: this may seem high, but it must be remembered that yearly contracts involve a far more complicated and expensive machinery than do the extended contracts of life insurance: while the incidental costs of a fire insurance business, the employment of surveyors, assessors, and the like, are also very much greater. The question of the reserve involves a further consideration. The premium income forms the greater part of the fire fund of

[1] Such as Cripplegate in the City of London, the timber-yards of Hull, and large districts in Bristol, Belfast, and some other cities, which appear to be subjected to special rates of their own.

a fire insurance office and provides (*a*) a fund out of which current liabilities, i. e. the losses which are to be expected in any normal year, are to be met, (*b*) a reserve for unexpired risks under insurances not yet run out by the end of the year, and (*c*) a further balance against contingencies. The interest from capital is included in the fire fund ; and the proportion of this further balance which the directors consider may be regarded as profit, forms the shareholders' dividends, the remainder being added year by year to the general reserve. These reserves are quite separate and are the real backbone of the office. They give it financial stability, strengthen its credit, and enable it without difficulty to meet abnormal losses which may come unexpectedly at any moment, and of which the San Francisco and Valparaiso disasters are examples.

An office which allocates in its accounts a definite part of its premium income to cover risks as yet unexpired when the accounts are made up, is obviously adopting a wiser policy than one which does not, because its financial position is more truly and accurately displayed ; and the natural result will be that it is appreciably a sounder one. It is said that from 40 per cent. to 45 per cent.[1] is the right proportion of premium income so to allocate.

The proportion which the general reserve should bear to the premium income can scarcely be stated with such precision. An office with a specific reserve against unexpired risks will probably maintain a general reserve equal to two years' premium income ; an office with no such specific reserve will, or should, show a considerably higher proportion. It should, nevertheless, be remembered that sudden and abnormal losses may have proved a great strain upon the particular

[1] The higher figure is necessitated by the larger amount of foreign business now transacted by the more important English and Scottish offices. It is said that for home business alone 40 per cent., or even less, would be sufficient.

reserves under consideration, and it is scarcely fair to judge an office without comparing a succession of years and their results.

A word will suffice as to the character of the investments of which the reserve is formed. Unlike a life office, a fire insurance office may be called on at any moment to pay over very large sums in claims which it is impossible to foresee; and in consequence, its investments are such as will be always easily realizable, and very little of its money will be found locked up in mortgages and such like.

The Proposal.—Most of that which was said with regard to the proposal for a life policy is equally applicable to fire insurance, for the contract of fire insurance is also one 'uberrimae fidei'. Hence the proposer cannot be too careful in filling up the proposal form. The property to be insured, and the place or premises where it is situated, must in particular be most carefully described; while the presence or absence of any circumstance which might tend to increase the risk which the office undertakes should always be disclosed, nor must it be forgotten that the view of the assured himself as to what circumstance might increase the risk is immaterial; the question always is—will it in fact do so? Whether the proposer has an insurable interest in the property to be insured must also be considered, and often gives rise to more difficult problems than in life insurance; for the interests that may exist in property are infinitely more numerous than those in the life of a fellow man.

The definition, however, already given of an 'insurable interest' holds good; and the nature of the interest insured should be described in the policy, whether arising from ownership, mortgage, contract of sale, or as the case may be. An ordinary policy, for example, on furniture in a dwelling-house will not cover what is not at the time the property of the assured, though it may belong to members of his household, unless, that is, it is specifically agreed by the office to insure it;

and the convenience of an arrangement to this effect, which is now not uncommon, does not need to be pointed out.

Particular care should be taken to see that all the goods for which protection is desired, are in fact situated in the premises covered by the policy, and further reference to the importance of this will be made later. It may well be that an office will not be willing to take advantage of a mere inadvertence in this respect on the part of the assured, but it would be wholly within its rights in doing so, and the assured could only have his own carelessness to thank for it.

The system of what are known as 'deposit notes' or 'deposit receipts', needs a word of explanation. Properly speaking, the protection which the assured seeks runs only from the time when the proposal has been made and accepted, and the policy issued. The assured, however, may desire immediate protection, and it is therefore customary for the office to whom the proposal is made to issue a 'deposit receipt' on payment of a deposit, which, for the space of fourteen days, or more, gives all the protection afforded by the policy itself until the office makes up its mind whether it shall accept or decline the risk. Thus a house may be protected against fire before the actual issue of the policy, and the office would have to pay if the house were burnt down during the fourteen days, unless it had previously notified the owner that his proposal was refused. There is, indeed, no reason why property already destroyed by fire should not be insured and a claim paid upon it, provided that it had been arranged to date the policy before the fire and the proposer was ignorant of its occurrence, as might easily happen in the case of goods situated at a distance.[1]

The inquiries of the office, and perhaps a survey of the premises proposed to be insured, make it necessary that some period should elapse between the proposal and its acceptance

[1] The words 'lost or not lost' are always inserted in a Marine Insurance policy to cover a contingency of this kind.

or rejection. The deposit-note bridges the gap very conveniently. Nevertheless, a proposal involving more than the normal risk would probably not receive this temporary protection.

The Policy.—The proposal having been accepted, the premium paid, and the policy issued, the proposer is now insured under the policy itself. Policies vary according to the property which they insure, but they normally contain elements and conditions common to all. The ordinary English fire policy (unlike that of marine insurance) is very rarely a 'valued policy', though this is said to be not uncommon in America. By a 'valued policy' is meant one in which the agreed value of the property appears on the face of the policy, so that in the event, e. g. of a total loss by fire, the office pays the sum so agreed, although this may amount to more than the actual loss sustained. These policies can scarcely be said to be strict contracts of indemnity, and their unpopularity in this country is due to the temptation they offer to fraudulent and unscrupulous persons. Nevertheless, at Lloyd's (where a great deal of fire, as well as marine, insurance is transacted) 'valued' policies may be obtained; but the course of business among underwriters at Lloyd's by which insurances are effected solely through insurance brokers, who act for the most part for clients of standing and reputation with whom they are well acquainted, renders a fraudulent insurance of this kind very unlikely.

A 'specific' policy is one which insures property up to the limits of a specific sum without regard to its actual value. Thus in the case of a house so insured for £10,000, the total value of which was ascertained to be £20,000, the office would pay, if damage by fire was done to the extent of £15,000, up to the limits of the sum it had insured, viz. £10,000, and not a sum bearing the same proportion to £10,000 as £15,000 to £20,000, viz. £7,500.

A clause, however, known as the 'average clause' is very

generally inserted to prevent the assured insuring up to a limit which represents a part only of the total value of the property insured, and so running the risk of incurring a total loss, or at any rate a loss beyond the limit of his protection, in order that he may pay a less amount in premiums ; for it is obvious that if his losses by fire are partial losses only, and within the limit of the sum for which he is insured, he can compel the office to pay him in full every time, and yet secure for himself the benefit of an appreciably smaller premium. Such a course of dealing is neither profitable to the office nor (when the risk of a heavy loss which total destruction by fire would involve) deserving of encouragement on the part of the assured himself, who is really gambling on the chance of escaping with partial losses only. The average clause makes him his own insurer for the amount uncovered by the policy, and in the event of any kind of loss he has to bear a proportion of it himself. An average clause will therefore mean, in most cases, a reduced premium.

Conditions in the Policy.—A 'floating policy' (or 'floater' as it is sometimes called) is one which insures, up to a certain limit, goods of a specified class which may at any given time be situate on the premises or in the warehouses of the assured during the currency of the policy. Such policies are most useful to merchants and others whose merchandise or stock may vary from day to day ; and in a very much less degree may be found convenient to householders for covering the odds and ends of their personal effects, of which it may be difficult to give complete and accurate lists.

The usual conditions in a fire policy deal with material misdescription of the property insured, or of the premises in which it is situated ; increase of risk, and removal of the property from the premises where it is stated to be ; passing of the interest of the assured in the property ; the method of making claims upon the office in the event of damage by loss or fire ; power reserved to the office of 'reinstating' the

property destroyed instead of paying a sum of money equivalent to its value; and of requiring the concurrence of the assured in all steps taken by the office for the purpose of enforcing any rights to which it may become entitled against other people. There is also almost always an 'arbitration' clause and a proviso that the breach of any warranty to which the property insured is, or will become subject, shall bar any claim in respect to such property.

A breach of the conditions respecting the first three of these will work the forfeiture of the policy. The rule about misdescription has already been discussed in relation to life insurance; and increase of the risk without the knowledge of the office must clearly relieve it from liability on the same principles, while the restriction on the removal of the property insured is only a particular example of the same rule. A rigid construction of the latter might easily cause hardship. The assured, for example, might have no power to prevent the removal of goods which he has been prudent enough to insure because he possesses some interest in them, though not one which gives him the right to complete control over them, as e. g. in the case of a mortgagee. Or, again, if I insure my personal effects, and thereafter take any of them with me on my travels, I have equally forfeited my protection. The difficulty is got over in different ways. Usually the office will sanction the increased risk or the removal of goods in appropriate circumstances, charging perhaps an increased premium, and will endorse the policy accordingly. And goods temporarily removed which come under the description of articles of household or personal use, or ornament, may now be protected by a special clause in the policy which gives the assured leave to take them almost anywhere except to a furniture depository, while continuing his protection up to a limit of 10 per cent. of the whole sum insured upon them in the policy itself.

Assignment of interest in the property insured obviously

avoids the policy, for, as has been already pointed out, the assured's *interest* in the property, and not the property itself, is the subject of the insurance. Hence the benefit of a fire policy can only be assigned with the sanction of the office endorsed upon it; wherein (as has been pointed out) there is a notable difference between fire and life insurances. It is to be noted, however, that a Lloyd's fire policy, among its other peculiarities, is expressed to be payable to the assigns of the assured, and that the sanction of the underwriters is not required to any assignment.

The condition as to the making of claims usually requires notice of damage or loss by fire to be given immediately, and a claim to be made with reasonable particularity in thirty days. A claim fraudulent in any respect forfeits the entire benefit of the policy.

The power to 'reinstate' needs a few words of explanation. An office has by statute a right to reinstate buildings; it has no right to reinstate other property unless the policy permits it. Further, the assured himself may require a building to be reinstated, but he cannot do so in the case of goods. It is not difficult to see how useful to the office the right may be; as, for example, in cases where the measure of the loss suffered and the principle on which the compensation should be assessed are open to dispute. But, on the other hand, it cannot be denied that it might be used in such a way as to cause real hardship; the assured, however, must be content to rely on the generosity of the office, and his confidence in most cases will not be misplaced.

The condition requiring the co-operation of the assured in assisting the office to pursue its rights against other persons has reference to that doctrine of subrogation which has been before explained.

The arbitration clause has already been discussed in connexion with accident insurance, and needs no further comment. But an arbitration clause binding the assured to pay his own

costs in any arbitration proceedings, whether they result in his favour or not, is to be avoided. It is to be hoped that a clause to this effect (which has been by no means uncommon) will one day become obsolete in the fire insurance world, where it has worked much injustice. As a pleasing contrast, another form of the clause may be noticed, by which the office binds itself to pay *its own costs* in any event, leaving other costs to the discretion of the arbitrator. Liberality can scarcely go further.

What is known as the 'contribution clause' may be conveniently referred to here. When there is more than one policy covering the same property to an amount beyond its value, the assured would be legally entitled in ordinary circumstances to claim under either policy, or both, as he preferred, provided always that he did not receive a sum in excess of the amount of his loss. The offices (if the policies, that is, were taken out in different offices) would adjust with each other afterwards the sum which each ought to contribute in proportion to the amount covered by the respective policies. The 'contribution clause' (which is now found in most policies) compels the assured himself to claim from each office a proportionate amount; and adjustment between the offices, therefore, now comes *before* the payment of the claim instead of after it.

The Usual Exceptions in the Policy.—Various articles (to which reference is made below) are usually expressly excepted from protection, but may of course be covered if the rates of premium which would be demanded on them are paid. Loss or damage through earthquakes or hurricanes, or any invasion, foreign enemy, hostilities, riot, civil commotion, or military or usurped power, and loss by theft during or after a fire are also among the exceptions. The disputes arising from the earthquake clause will be remembered in connexion with the San Francisco and Jamaica fires. The other exceptions mentioned explain themselves.

Those in a Lloyd's policy include only insurrection, riots, civil commotion, or military or usurped power.

The Nature of the Property Insured.—In theory, of course, a fire office can insure any species of property that it desires, at appropriate rates. In practice, however, the rates on some kinds of property (in order to be commensurate with the risk involved) would be so enormous as to be prohibitive, while there are others which no office will ever make the subject of insurance at all. Among these will be found bank-notes, cheques, money, and securities for money, books of account and the like, most of them being things whose intrinsic value is small but which are symbols of other very valuable property. Again, the ordinary form of policy on the contents of a dwelling-house will except from its protection such things as jewellery, china, glass, lace, engravings, paintings, &c., unless specifically mentioned and insured, of course, at a very much higher rate of premium.[1] The householder will therefore take care to ascertain before his policy is issued the exact scope of the protection which it gives him.

Insurance of Rent.—It may be useful here to refer to the subject of the insurance of rent. Suppose a landlord to insure a house against fire and the house to be burnt to the ground. In the absence of anything to the contrary in the lease, he can still require his tenant to continue to pay him the rent due, though the tenant may be without a roof to cover his head. The landlord therefore is in no sense the loser, whether the office exercises its right to reinstate him or not. But if it be the tenant who has insured,[2] the case is very different. Loss or damage by fire does not include the liability to pay rent for premises which no longer exist, because

[1] Very often, however, pictures (unless of exceptional value) will be insured at the ordinary furniture rates, a limit being placed on the amount recoverable on any single picture.

[2] Of course most leases contain a covenant obliging the tenant to insure.

(as will be seen later) losses which are the consequence of a fire, apart from the actual and material damage done, are not covered by the policy at all; loss of profits and liability to pay rent are good examples. Rent, therefore, must be specifically insured, and this can usually be done at the present time at rates in most cases identical with those charged on the premises themselves for which the rent is paid, and in the same policy.

The Payment of Premiums and Renewal of Policies.—The consideration for the promise of the office to cover loss and damage is the premium paid by the assured. This will vary infinitely according to circumstance, and no rule can be laid down. It will be found that the rates on private houses are exceedingly moderate, and for the most part uniform; those on goods or business premises will vary with the nature of the property insured to a much greater extent. The normal rate for a private house in London and most large towns is *1s. 6d.* per cent., and probably the same premium will be asked for insuring furniture in the ordinary sense of the word.

A fire policy runs for a year only[1], and is then determinable at the option of either party to the contract. The premium is payable yearly or half-yearly, as agreed, and 'days of grace' are allowed. A fire, therefore, occurring before the days of grace have expired will render the office liable to pay compensation, if the assured at once tenders the premium due within the same period.[2]

Assignment.—Nowhere does the difference between fire and life policies appear more striking than when questions of assignment arise. A fire policy is *not* property in the ordinary sense, and has no market value or surrender value. The risk of fraud which an unrestricted right to assign would involve is ample reason for the distinction: for the risk of

[1] Policies for a term of years are met with, but are uncommon.

[2] But an office is under no duty to the assured to remind him that his premiums are unpaid.

murder by the assignee of a life policy is too remote for a modern civilized state to contemplate. Hence the condition is almost[1] invariably found in a fire policy that no assignment is valid without the consent of the office endorsed on the policy itself. And it must be remembered that even an assignee by consent of the office will never be allowed to enforce any claim unless he has an insurable interest existing *at the date of the loss.*

It follows that the transfer or conveyance of insured property does not include transfer of policies upon it, and the purchaser (in the absence of a contractual right) cannot call for such transfer; although by the sale of the property the vendor loses every particle of interest in the policies which he has taken out.

Losses by Fire.—What 'losses by fire' does the ordinary policy cover? A series of cases in the courts have laid down the rule that the property insured must have been actually destroyed, or damaged, by or through the occurrence of a *fire*, that is, ignition: an overheating, for example, of a flue, causing damage to the flue without setting it alight would be insufficient. Losses *through* fire mean proximate losses only; thus damage caused in a kitchen by a gas explosion would be within the policy; but damage such as that caused in Woolwich in February, 1907, by the great explosion in the Arsenal, would not have been covered, for they were only indirectly so caused[2]; and in the same category come loss of

[1] Lloyd's fire policies as a matter of fact (for the same reasons as in the case of valued policies) make policy moneys payable to 'assigns', and do not require any consent from the insurers.

[2] A good example of a loss held too remote to be within the policy occurred where a crowd broke into some premises in order to view a fire, and did damage inside. Policies, however, covering indirect loss, and particularly loss of profits, can be obtained at Lloyd's, where the course of business already described renders possible all kinds of odd insurances, which no insurance office would look at for a moment. These range from insurances against the birth of twins to insurances against increased taxation.

profits and the like resulting from a fire. Most policies expressly cover loss by boiler or gas explosions, except in places where gas is manufactured, and (in the case of boilers) in business premises.

Damage by lightning also is usually expressly covered. The ordinary 'exceptions' have been discussed above; but the peculiar case of spontaneous combustion deserves mention. Damage to property occasioned by *its own* spontaneous heating or fermentation is usually excepted, but the exception applies only to the property wherein the heating or fermentation begins, and not to other property damaged by the fire so generated.

Every policy of course covers loss by fire owing to the assured's own negligence.

In accordance with the almost invariable condition of every policy, immediate notice must be given to the office of any loss by fire, and this must be followed in due course by a claim containing full particulars. The offices require an immediate notice in order that (if necessary) they may themselves survey and inspect the scene of the fire.

Adjustment of Losses.—The burden of proving a loss lies wholly on the assured, who will be required to produce all papers, documents, and receipts which will enable a correct estimate to be formed of the loss which he has suffered. The office is represented by 'assessors', who are persons trained to the work of estimating losses by fire, and it is when the assured, for some reason or other, is unable to accept the assessor's calculation, either because it is too small or proceeds on what the assured regards as the wrong principle to apply to his own particular case, that a dispute arises which will probably entail an arbitration. It may often be very difficult to give satisfactory proof of the value of goods destroyed; the householder will not usually, for example, preserve receipts showing the price he gave for his furniture, it may be years before, and he may be very unwilling to accept

the assessor's estimate. A useful innovation is the introduction into the policy of a valuation of the property insured by the office's own valuer or some one approved by them, which forms a basis on which the assessor can work.

In settling losses it must however never be forgotten that the office pays on the basis of value *at the time of the fire* only. Hence the price originally given for the goods insured or their valuation at the date of the policy is only evidence of what (after allowing for depreciation, &c.) the value may be regarded as being *now*. And value means strictly market-value; a fire office cannot take sentimental considerations into account nor (to take an example which has been not infrequently used) a collector's own estimate of the genuineness and value of his collection. Particularly where an office exercises its right to reinstate a house may the principle be seen at work. The new house will not be identical with the old, nor necessarily as large or commodious, but it will represent in bricks and mortar the market-value of the structure of the old house as it stood when it was burnt down. In other words, fire insurance is a contract of indemnity only.

The 'contribution clause' has already been dealt with. But a clause is also very generally included in floating policies known as the 'contribution average clause', by which it is provided that if at the time of the issue of the policy the property which it covers is already insured under a more specific insurance, the second policy shall be regarded as covering only the excess of value over the amount covered by the first. In other words, the loss falls on the specific policy first, and only in case of a deficiency on the second or floating policy.

A fire policy on which a loss has been paid up to the limit insured is dead for the remainder of the year of currency. The assured who wants further protection must take out another policy, and cannot require the office to pay time after

time up to the limit of their liability until the year has expired.

Tariff Offices.—Allusions will often be met with to the 'Tariff Offices'. A Tariff Office is one of a number of fire offices which have combined together to fix minimum rates of premiums for various classes of risk. Under the direction of a body known as the Fire Offices' Committee they have agreed to pool their experience and their statistics, and have thus been able to arrive at a more scientific and accurate basis for the classification of risks.

§ 6. Burglary and Servants' Accident Insurance.

Anything may be insured against, but the only other forms of insurance likely to be of use to the private householder are insurance against the theft of his movable property and against his liability to compensate his servants for accidents.[1] Both are comparatively simple matters about which there is little to be said. With regard to the latter, the employer should notice that the law does not provide for the cost of medical attendance consequent on the accident, so that he will not be able to recover from the insurance company anything he may expend on medical attendance if the policy only provides for all his liabilities under the Acts.

[1] Above, chap. ii, pp. 67–9.

VI

WILLS. EXECUTORS. TRUSTEES

§ 1. Wills.

Freedom of Bequest.—In many lands a man is compelled by law to leave his property—or rather the law leaves it for him—in whole or in part according to the circumstances which exist at the time of his death: 'So much,' it says, 'must go to your wife, so much to your children,' and so forth; but in this country[1] any person of full age and sound mind can dispose by will of all real and personal property to which he shall be entitled at the time of his death, and of any property over which, though not his own, he has, by will, settlement, or otherwise, been given a power of testamentary appointment. To dispose of his own as he pleases is the privilege of the Englishman: he may indulge in the posthumous gratification of the most arbitrary caprice: nor will the law intervene, however cruel or unjust his dispositions may be. It is proposed to consider in the following pages for what reasons and in what manner a testator should avail himself of his opportunities.

Reasons for making a Will.—'Why should I make a will?' is the first question which would naturally occur to the mind of the potential testator; and the answer is that he need not

[1] By the law of Scotland children have an indefeasible right of succession to a part of their parents' property. For example, the estate of a married man who leaves a widow and children is divided into the Jus Relictae, or widow's portion, the Legitim, or 'bairns' part of gear', and the Dead's Part, or portion which may be disposed of by will. If he leaves no widow, the estate is divided into halves. Children have a similar right of succession to their mother's property.

make a will at all, if he is satisfied with the way in which the law will otherwise dispose of his property when he dies. But if you feel any reluctance to make a will, consider with the greatest care what will happen if there is no will. Briefly, the result may be given as follows. A near relative, or other person specially concerned, will take out letters of administration to the estate (see below, p. 187), and provide for the payment of debts and funeral expenses. The distribution of what remains will depend upon the state of your family; the real estate, or land (not including leasehold property, which is personalty), going to the eldest son or other heir-at-law, the personalty passing to your widow and children or other next-of-kin. There may have been some exaggeration in the statement of Mr. Bindloose that it is 'an awfu' thing to die intestate', but it is at least certain that an intestacy is open to objections. Since you cannot foresee what the state of your family will be at the time of your death, you cannot tell who will then constitute the heir-at-law and next-of-kin; and it may be that a relative whose existence you do not recognize or have forgotten will come in and take, to the total or partial exclusion of those whose interests you have most at heart. Nor can you be sure to whom administration will be granted; possibly to a person unequal to the burden, or unfit for the responsibility: whereas the appointment of executors by will gives a reasonable chance of committing the administration of your estate to competent and trustworthy hands. There is much wisdom in the Rubric which, after speaking of the duties of the sick man, proceeds: 'And if he hath not before disposed of his goods, let him then be admonished to make his Will, and to declare his Debts, what he oweth, and what is owing unto him; for the better discharging of his conscience, and the quietness of his Executors. But men should often be put in remembrance to take order for the settling of their temporal estates, whilst they are in health.'

Difficulties.—Let it be clearly understood that a man who intends to take order for the settling of his temporal estate in the fashion to which the Prayer Book incites him, is confronted by a task of great importance and of even greater difficulty. It is too often assumed that a half-hour's leisure, a half-sheet of note-paper, a hazy notion of what you possess, a still hazier notion of what you intend to do with it, and a smattering of legal phrases, are the sole requisites for the production of an effective testamentary instrument. Let it be remembered that it is only when the testator can no longer explain his meaning or clear up obscurities that the precise import of his language is called in question; that evidence as to his meaning is very rarely admissible; and that it taxes the skill of an experienced draftsman to foresee the manifold possibilities of the future, and to provide for them in words which are susceptible of one meaning alone. Nor should the testator comfort himself with the reflection that, in spite of ambiguities of language, his real intention must be apparent: very probably;—but a Court of construction is concerned to discover, not what the testator intended to say, but the meaning of what he has said. No matter with what certainty the intention of the testator may be conjectured, the Court can do nothing more than give effect to the language which he has actually used; it cannot reconstruct the will upon a basis of guesswork, or put words into it to give effect to a hypothetical intention not expressed by the testator himself in the document which he has executed. Nor should any testator suppose that in case of doubt the parties interested will come to some amicable arrangement, to avoid the expense of litigation. If infants (i.e. children under twenty-one) are concerned, no compromise can be made without the sanction of the Court and when a bad will furnishes occasion for a family squabble, the peacemaker can rarely look upon success as any part of his blessedness. David Copperfield 'asked Mr. Spenlow what he considered the best sort of professional business. He

replied, that a good case of a disputed will, where there was a neat little estate of thirty or forty thousand pounds, was, perhaps, the best of all. In such a case, he said, not only were there very pretty pickings, in the way of arguments at every stage of the proceedings, . . . but, the costs being pretty sure to come out of the estate at last, both sides went at it in a lively and spirited manner, and expense was no consideration.'

If you are compelled to make your own will in an emergency when no expert aid can be obtained, then be simple in your dispositions, and be simple in your language, remembering that of the many pitfalls which await you, the deepest lie hidden beneath the deceptive charms of legal phraseology.[1] And do not allow yourself to feel any confidence in this handiwork of yours, but regard it as something which must be superseded as soon as circumstances permit.

The only way to make sure of saving your successors from a great deal of trouble and expense, is to take some trouble and incur a small expense yourself. Sit down and consider carefully what you want done; then draw up a memorandum of your wishes, and take it to an experienced solicitor. Long practice has made him familiar with schemes that you could never devise, with difficulties that you could never surmount, and with dangers that you could never foresee; and by all this you will benefit, besides having your own ideas embodied in appropriate legal language.

Great care, then, has to be taken, but it should not be forgotten that there is a difference between care and over-elaboration. Many testators worry quite unnecessarily about the future. Whenever you can reasonably do so, give your gifts out and out, and do not attempt to tie the property up for the benefit of persons in succession. The law looks

[1] Particularly such expressions as 'heirs', or 'heirs of the body', and 'issue', which are almost invariably productive of results altogether unexpected by the testator.

askance upon settlement of capital and accumulation of income; indeed, it actually prohibits them except within definite limits. To avoid complications altogether is the safest from a legal, and the best from a practical, point of view. Of course you will not want to place your capital in the hands of a spendthrift, and the character and circumstances of the beneficiary have always got to be taken into account; but, for example, why, in the absence of special considerations, should you restrict your own children in the enjoyment of what you leave them, when the people to benefit will be grandchildren whom you may never have known? Recollect also that changing circumstances during your life, such as the death of your wife or the births of children, can be met by a new will. 'Oh,' you will say, 'but my wife is always with me, and we may be killed in the same accident or drowned in the same shipwreck.' True; and it is possible to provide for such an eventuality; but it will probably be as much as you can do to provide properly for the future on the basis of the actual present, without attempting to provide for it also on the basis of another future, itself hypothetical.

Let us now consider in detail some of the questions which confront the typical testator, taking them in the order in which they appear in an ordinary will.

Executors.—It is for the testator to determine according to his taste how many executors (see below, p. 186) he will have, whether one or more; and whether any of those whom he appoints are to be restricted to an executorship during a particular time, in a particular place, or with regard to a particular part of the estate. It is not uncommon for a testator, who is leaving the entirety of his property to one person, to appoint that person his sole executor or executrix: otherwise two or three will usually be appointed. Any person of sound mind and of full age may be appointed;

so, indeed, may an infant, but an infant is incapable of acting during infancy. When the executors take little or no benefit under the will, their appointment is usually accompanied by a bequest to each of them who accepts office, by way of remuneration for his services. Amongst beneficiaries the residuary legatee, who takes the ultimate balance, has the greatest personal interest in proving a capable executor, since the amount of his residue is affected by efficiency and economy in the administration. Where there are infant children, the executors are sometimes made guardians of such children jointly with the wife. Before appointing a person an executor, it is well to ascertain that he is willing to act, although a general promise to act, if appointed, is not binding. The place of a person appointed executor who during the lifetime of the testator dies, or goes bankrupt, or becomes otherwise unsuitable, may be filled by a fresh appointment of executors by codicil: see below, p. 184. The question, what sort of persons should be appointed executors and trustees, and the nature of their duties, will be discussed in the succeeding sections of this chapter.

Marriage Settlement: Double Portions.—A marriage settlement, when it exists, should be confirmed, with a declaration that the provision made by the will for wife and children is to be in addition to, and not in substitution for, that made by the settlement. It is not necessary to confirm marriage or other settlements made by the testator on his children; but attention may be called to a presumption of law known as the rule against double portions. The law assumes that children are intended to share equally, and when a person, who stands in a parental relation to other persons, makes a gift by will to any one of such persons and afterwards makes a substantial payment to such one, e. g. on marriage or on entering a profession or business, then, in the absence of proof of a contrary intention, it will be assumed that the latter benefit was in substitution for that originally proposed by the will. For

example, a man with four children makes a will leaving £3,000 to each of them. He afterwards advances £3,000 to the eldest son to purchase a share in a business. On his death the eldest son takes nothing under the will, having already received what would otherwise have been his portion. Also, when a parent has covenanted to pay a portion to a child and afterwards gives a legacy to that child, the legacy is *prima facie* a 'satisfaction', so far as it goes, of the portion; and if this is not the intention of the testator, he should say so when he gives the legacy. In the former case, known as 'ademption', there can be no expression of intention *in the will*, because ademption arises from acts subsequent to the will.

Consumable Stores, &c. It is desirable to give to some person (e.g. a wife) carriages, furniture, household and personal effects, and consumable stores; also to a wife or unmarried daughter living at home, a sum of money to be paid immediately and in priority to everything else. Consumable stores cannot in the nature of things be made the subject of successive interests. It is usually better to dispose of furniture, pictures, plate, &c., by an absolute gift also, but a life interest in such things may be created, if they are of special value or interest, or if there are other circumstances rendering such a course desirable. In that event consider by whom they are to be insured and repaired, and whether or no an inventory is to be made. A sum of money payable immediately on death is frequently of great service to a wife, enabling her to meet the current expenses of the home during the period, which may run to a year, occupied by the executors in winding up the testator's affairs.

Legacies and Annuities. A legacy is a gift of a particular thing, or of a lump sum of money, e.g. 'my diamond necklace', 'my Hudson's Bay shares', 'a sum of £100': an annuity is an annual sum. Legacies may be (1) specific, i.e. a definite part of the estate; (2) general, i.e. a sum of money; or (3)

demonstrative, i.e. a general legacy charged on a particular fund. If the testator afterwards parts with a thing specifically bequeathed, the bequest is cancelled: but a demonstrative legacy does not fail by any insufficiency of the fund on which it is primarily charged. When an annuity is given, the time from which it runs will be the date of the death of the testator, unless anything to the contrary is expressly provided; the date at which the first payment is to be made should be mentioned. If legacies and annuities are given duty free, the duty as well as the legacy will be thrown on the residue.

Residue. The residue, when not the subject of an absolute gift, is usually given upon trust for sale, with power to the trustees to postpone sale, and to retain existing investments. Funeral and testamentary expenses, debts, legacies, and annuities having been paid, satisfied, and provided for, the balance is directed to be invested in securities selected by the testator or authorized by law. The question to whom the residue is to be given should be carefully considered; it is of great importance. In the first place, the testator cannot tell what property may come to him by one means or another between the date of his will and the date of his death. Nor can he tell to what extent the residue will be augmented by the lapse of gifts to persons predeceasing him; all such gifts fall into residue, except in the special case where lapse is prevented by Section 33 of the Wills Act, which provides that a gift to issue of the testator will not lapse, where the legatee predeceases, but leaves issue who survive, the testator. Observe, however, that the Act does not substitute the issue for the deceased legatee, under whose will or intestacy the property will accordingly pass. It is, of course, possible to divide the residue into shares, equal or otherwise, and of these some or all may be given absolutely, and some or all settled. In the will of a married man the trusts of the residue are usually as follows:—Income to wife for life, or during widow-

hood, as the testator may decide. After her death or second marriage capital and income in trust for issue, whether children or more remote descendants, as the wife shall appoint, i.e. in such shares as she shall specify: and in default of and subject to any such appointment, in trust for children who attain twenty-one or, being daughters, marry. The wife may live to see alterations in the circumstances or characters of the children which the testator cannot foresee and provide for. Moreover, a power of appointment invests a parent with a salutary control over children. It is desirable also to insert what is known as the hotchpot clause, the object of which is to prevent inequalities under an appointment extending only to a portion of the trust fund, or settled property. In the absence of the clause a child to whom a part of the fund is appointed, will share in the unappointed part upon equal terms with the other children. Trustees have a statutory power of maintaining infant children; and they may be usefully empowered to advance any part not exceeding one half of a child's presumptive share for his or her establishment in life, e.g. to enter a profession or purchase a partnership.

A professional trustee or executor may be authorized to charge for work done by him; and it may be convenient to nominate some person to appoint new trustees, the power usually being given to the person entitled to a life interest in the income or rents and profits, who is called the tenant-for-life.

If you wish to give any special directions for your funeral, do not put them into the will, which may remain unopened till the funeral is over. The best thing to do is to make your wishes known to those about you, who are likely to make the necessary arrangements. Failing this, a letter may be left addressed to the executors with a direction that it is to be opened immediately upon death.

Writing.—Two classes of persons, namely, 'any soldier being in actual military service,' or 'any mariner or seaman,

being at sea', may make a will by word of mouth in the presence of witnesses; but with these exceptions every will, to be valid, must be in writing. It should be written out clearly and neatly, all corrections, additions, interlineations, and erasures being so far as possible avoided: where such are made, the initials of the testator and of the witnesses should be written in the margin against them, to show that they were the handiwork of the testator and made prior to the execution of the will. After execution no change must be made.

Signature and Attestation.—The Wills Act requires certain formalities in the execution of a will. The testator must sign the will at the end or foot, or he must put his mark there, or his signature or mark must be affixed by some person in his presence and by his direction; and this must be done in the presence of two witnesses, who must then in the presence of the testator attest and subscribe the will. A will is not invalidated by the incompetency of an attesting witness, but a gift in a will to a person who witnesses it, or to his or her wife or husband, fails. To the signature of each witness it is convenient to add an address and description. No form of attestation is necessary, but an affidavit will be required from the witnesses to the effect that the proper formalities were observed, unless the attestation clause so states.

Codicils.—A codicil requires to be written, signed, and attested in all respects as a will: it is a convenient means of making minor alterations suggested or necessitated by changing circumstances, such as the appointment of different executors, or the addition or omission of a legacy or annuity; but it should never be resorted to when any important change is in contemplation. It is far better in such a case to abolish the old will altogether and begin over again.

Revocation.—'Every will made by a man or woman,' says the Wills Act, shall 'be revoked by his or her marriage'; but with this exception 'no will shall be revoked by any presumption of intention on the ground of an alteration of circum-

stances'. Apart from the automatic revocation effected by marriage, a will may be revoked by the execution of another will, or a codicil, which overrides or expressly revokes it, or by burning, tearing, or otherwise destroying it, the process being accomplished by the testator or by some person acting in his presence and by his direction.

It is always advisable, in making a fresh will, expressly to revoke all testamentary dispositions previously made. If a man leaves two wills behind him, and the later in date contains no express revocation of the earlier, both documents may be admitted to probate together, and the earlier will have effect so far as the provisions of the later are not inconsistent with it. Under such circumstances difficult questions of construction are not unlikely to arise, and it is more than probable that the intentions of the testator will be defeated, at least to some extent. Moreover, it should be remembered that a revocation once made is a revocation for good and all. It sometimes happens that a man makes a will, becomes dissatisfied with it, executes a new will, then desires to abolish the second will and to reinstate the first, and accordingly tears up the second, and supposes that his purpose is accomplished. But the result which he anticipates will by no means follow with certainty; for, if there is an existing draft or any other evidence in existence to show that the second will contained a revocation clause, then, the first will having been revoked, there is no will at all. The proper way in which to revive a revoked will is to re-execute it, or to execute a codicil clearly showing an intention that it should be revived.

References by the Testator to Documents.—Before leaving the subject of mode and form, it may be as well to state that documents actually existing at the date of the will can alone be incorporated therein, and they must be referred to in such a manner as to identify them beyond the possibility of doubt: never refer, as testators are fond of doing, to 'my papers, memoranda, and note-books', looking forward to their

future state when death occurs. Such a reference is obviously bad: otherwise, an unsigned and unattested document would thereby receive the force of a testamentary disposition.

Where to keep the Will.—When the will or codicil is signed and executed, leave it with your solicitor, telling your relatives who the solicitor is, or deposit it yourself where it is not likely to be lost, overlooked, or destroyed.

§ 2. Executors and Administrators.

Probate.—An executor is the person to whom a testator confides the administration of his estate; an administrator is he to whom, for want of an executor, that administration is committed by the Court. An executor derives his title exclusively from the testator's appointment, but this title cannot be perfected without probate, for probate is the only legal evidence of a will. Before taking out probate, therefore, an executor can only perform the ordinary duties of his office, such as paying debts and dealing with chattels; he cannot carry legal proceedings beyond the point at which evidence of his title becomes necessary. When once he has begun to administer, he can be compelled to prove the will; and should he administer for more than six months from the death of the testator without obtaining probate, he will incur heavy penalties. It rests with any person named in a will as an executor to accept or refuse office; but, if he renounce, his renunciation must be explicit and total, and cannot be withdrawn when once recorded. If a person named as executor does not come to some decision of his own accord, the Court will compel him to do so by citing him to elect, and will treat non-appearance as being equivalent to renunciation.

A grant of probate may be made in one of two ways; in common form, or in solemn form. When no doubt exists as to the authenticity of the will and its due execution, a grant in common form will be made to the executor appointed by

the will, or to a person who, though not actually named as executor in the will, is thereby directed to exercise an executor's functions, and who is known as the 'executor according to the tenour'. Where several executors are appointed, any one of them may obtain a grant, power being reserved for the others to come in and prove afterwards.[1] To obtain his grant the executor must take the will to Somerset House, where it is copied into a book which is open to inspection by the public ; and he must take two oaths, the first of office, that he will duly administer, the second as to the amount of the deceased's property, for the guidance of the Inland Revenue authorities : a second copy on parchment with the seal of the Court affixed is then made and presented to him ; this is the 'probate.' Should there be any likelihood of the validity of the will being questioned, the executor should prove in solemn form, that is, he should obtain a decree in favour of the will after an action in open Court. Probate in solemn form, when once granted, can only be revoked by the production of a later will. Probate of either kind, so long as it remains unrevoked, is conclusive as to the death of the testator, the validity of the will, and the appointment of executors.

Letters of Administration.—When the deceased has left no will, or has left a will which does not appoint executors, or when the executors appointed renounce or die, the place of probate is taken by letters of administration, either simply or with will annexed. The administrator becomes an officer of the Court, which will prefer to make the grant to the person whose interest in the estate is predominant : when it has to select an administrator from amongst several next-of-kin or other persons with equal interests, it will strive to be

[1] 'The law regards co-executors as an individual person, and in the administration of the effects the acts of one are deemed to be the acts of all.' One executor may release a debt, or by acknowledging it can bind the estate. Where one executor wastes the assets, the others will not be liable, unless they have contributed, intentionally or otherwise.

guided in its selection by the wishes of those whose interests are collectively the largest. A grant need not be absolute: it may be limited either as to time or as to purpose.[1] Every administrator is required to take oaths similar to those sworn by an executor: moreover, he must enter into a bond, with two sureties, for an amount equal to double the value of the the property with the administration of which he is to be entrusted.

Duties of Executors and Administrators.—As the law now stands, all the property of the deceased vests in his representative, whose duties are as follows. First, he must bury the deceased in a manner befitting his estate and condition, for which purpose he will be allowed all funeral expenses reasonably incurred, but will render himself personally liable for any unwarrantable extravagance. Next, he must within the proper period obtain a grant of probate or letters of administration. After getting in and realizing the estate, which must be done with due diligence, he should then provide for all duties which have to be paid, and pay all the debts of the deceased. Finally, in the case of a will, he must pay the legacies, provide for the annuities, and deal with the residue as directed by the testator; in the case of an intestacy he must distribute the residue amongst the next-of-kin in accordance with the law of intestate succession.

Payment of Debts in Proper Order.—Payment of the deceased's debts is a matter which will require careful attention from the representative. Having ascertained by advertisement in London and local newspapers what claims

[1] Of limited grants the following are the most common:—(1) *durante minore aetate*, when the sole executor is an infant; (2) *durante absentia*, when the executors or next-of-kin are abroad; (3) *de bonis non*, that is, administration of so much of the estate as remains unadministered when executors or administrators have failed to complete their work,—not so often necessary in the case of executors, since, by what is known as the chain of executorship, the executor of an executor becomes automatically the representative of the original testator.

there may be against the estate, he must consider how far those claims can be met with the available assets or property of the deceased on which creditors or legatees may have a claim. The old distinctions between legal and equitable assets, and between personal and real assets, have for most practical purposes become obsolete ; but the order in which assets are applicable in the payment of debts, and the priorities of different kinds of debts, are governed by rules which the representative must bear in mind. Debts must be met in the following order :—

(*a*) Debts due to the Crown by record (i.e. debts shown to be due by the evidence of a Court whose records are authoritative evidence), or by specialty (i.e. debts secured by special contract contained in a deed).

(*b*) Debts to which certain statutes have given priority, of which liabilities under Friendly Societies Acts form a familiar example.

(*c*) Debts of record not due to the Crown.

(*d*) Debts by specialty and simple contract debts. Debts owing for valuable consideration (i. e. money due for value received) rank before voluntary bonds (i.e. voluntary promises to pay), unless the latter, though not given, have been assigned, for value, that is to say, unless the benefit of a voluntary promise to pay made to one person has by him been handed on for cash to some one else. As between simple contract debts, those due to the Crown have a priority over all others.

In connexion with the payment of the debts of the deceased the representative has certain powers and privileges. Amongst creditors of equal degree he may pay one in preference to another, and he may retain a debt due to himself in priority to all other creditors of his class. Further, he may pay a debt which the creditor would be precluded by statute from enforcing, and he may retain a statute-barred debt due to himself, for the statute destroys the remedy only, not the right. Moreover, an executor or administrator may pay or allow any debt

or claim on any evidence he thinks sufficient; may accept any composition or security for any debt or property claimed; may allow any time for payment of any debt; and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, or claim relating to his testator's or intestate's estate.

Payment of Legacies.—When all the debts have been paid, the payment of legacies must next engage the attention of the representative. If he pay them before paying the debts, and the assets afterwards prove insufficient to satisfy the creditors, he will become personally liable for the amount which he has handed over to the legatees. Nor will he be safe in paying legacies without first providing for contingent liabilities, unless he obtain from the legatees an indemnity against the risk he runs. As between the legacies themselves, first, those that are specific (i.e. a gift of a particular thing), then those that are demonstrative (i.e. a gift of money charged on a particular fund), must, so long as the specific thing or particular fund exists, be satisfied in priority to the rest. When the assets are insufficient for the payment of all legacies in full, general legacies and the unpaid portions of other legacies are reduced in proportion, or, as it is called, abate rateably.

Assets taken in Proper Order.—Next as to the order in which the assets should be resorted to for the payment of debts and legacies. The assets are liable for all debts, other than mortgage debts, as follows:—

(1) The general personal estate not specifically bequeathed and not specially exempted;

(2) Real estate devised in trust for the payment of debts;

(3) Real estate descended;

(4) Real estate charged with the payment of debts;

(5) General legacies, including annuities;

(6) Specific legacies and devises (i.e. gifts of specified real estate);

(7) Real and personal property passing under a general power of appointment exercised by the deceased.

A mortgagee may come either upon the mortgaged property or upon the personalty of his mortgagor; but as between the persons who take the real property and the persons who take the personalty, the mortgaged land must bear the burden of the mortgage debt, unless a contrary intention has been expressly signified by the deceased.

With regard to legacies, the general law is that the personal estate is alone liable for their payment. The general law, however, is subject to modification at the hands of a testator: he may declare that only a particular fund is to be liable, in which case the rest of the personalty is exempted; or he may throw the legacies entirely upon his real estate; if he merely charges them on his real estate, the primary liability of the personalty remains unaffected; if he creates a general mixed fund of realty and personalty, both will share the burden. In connexion with the subject of legacies it may be well to remark that the executor of a will by which legacies are given to infants should pay those legacies into Court: unless expressly authorized by the testator so to do, he should not hand over the legacies either to the infant himself, or to the father or guardian or any other person on the infant's behalf.

Every executor and administrator should keep a record of his dealings with the estate, and careful accounts of all moneys which come into his hands. He is allowed a clear year for the discharge of his duties, and there is no occasion for him to be precipitate in proceeding to a final distribution of the estate.

Unauthorized Executors.—A person who is neither an executor nor an administrator cannot with impunity perform any acts in relation to the estate of a deceased person except such as are absolutely necessary to be done. Such a person may give directions for the funeral of the deceased and pay for it out of his property; or relieve the immediate wants of

his family; or feed his horses and milk his cows; or receive his goods and place them in security: but upon the condition in every case that what he does is an act of necessity or an office of kindness, and not an assertion of ownership. When a person not qualified by office ventures to intermeddle with the estate in any other manner, he becomes an executor *de son tort*; that is to say, he assumes the character of an executor by his own wrong-doing. As might be expected, a person who chooses so to act finds small favour in the eye of the law. He incurs all the liabilities of a properly constituted representative without enjoying any of his privileges: he may be sued by the rightful executor or administrator, by any creditor, or by any legatee; but he cannot himself institute proceedings except within certain definite and narrow limits; nor can he plead a retainer of his own debt, as he would otherwise be entitled to do.

§ 3. Trustees.

'A trust is really nothing but a confidence reposed by one person in another' (in handing over property to be applied for particular purposes), 'and enforceable in a Court of Equity.' The person in whom the confidence is reposed is a trustee: the subject-matter of the trust is called the trust property: and those for whose benefit the trust is created are known as the *cestuis que trustent*, or beneficiaries.

Capacity to be Trustee.—It has been said that any person is capable of assuming the office of trustee, providing he be 'capable of taking and holding the legal estate, and possessed of a natural capacity and legal ability to execute the trust, and domiciled within the jurisdiction of a Court of Equity'. Women[1] are not as a rule desirable trustees, seeing that

[1] Married women used to be under legal restrictions and disabilities as trustees; but the last of these have been removed by the Married Women's Property Act, 1907.

they are accustomed to rely upon others in business matters. An infant lacks capacity to act whenever the nature of the trust requires an exercise of discretion on the part of the trustee; nor can he be made liable for a breach of trust. From a practical point of view the choice of trustees is always of great importance and usually of considerable difficulty. Many trustees are too apathetic to transact any trust business at all; some develop a sinister activity in thwarting every measure proposed in connexion with the trust property; others are weakly willing to adopt any scheme that may be suggested, without stopping to consider whether it is not more to the advantage of the beneficiaries for the time being than for the permanent good of the trust estate. The ideal trustee has none of these defects. He is a man of means, position, judgement, and experience, who will devote to the management of the trust estate the same care and attention that he would give to the conduct of his own affairs.

Acceptance of the Office.—A man cannot be forced to become a trustee, any more than he can be forced to act as executor, against his will: the option is his either to accept or disclaim office. He may by his conduct alone make it plain that he has never accepted the trusts, and such conduct will of itself operate as a disclaimer: but to protect himself adequately, every person named as a trustee and intending to decline the task should promptly execute a formal deed of disclaimer, because such a deed forms a permanent and unambiguous record. Acceptance may be effected by the execution of a deed, or by any express assent, or by conduct, for a man named as trustee who acts in any way in the trust will be taken to have accepted office. When once he has accepted, he can no longer renounce: he cannot then obtain his discharge unless released by the Court, or by all the beneficiaries if of full age and legal capacity, or by the persons with power to appoint new trustees appointing a trustee in

his place. If possible, avoid accepting office until you have obtained a copy of the trust instrument, and shown it to your solicitor for approval.

Number of Trustees.—However small may be the value of the trust estate, it is always extremely undesirable to place it in the hands of a sole trustee: and where the property is of any bulk, it is usual for the trustees to be three or more in number.

All the Trustees Responsible.—There seems to be a notion prevalent that there can be some such distinction between trustees as between managing and 'sleeping' partners. The Court knows of no such distinction, and holds that every trustee is bound to discharge his duties personally, to satisfy himself that what ought to be done is done, and this even though his co-trustee may be a business man of the greatest activity and experience. A trustee who by his negligence or indifference allows a co-trustee to waste or misappropriate the trust estate is just as liable for the loss incurred as though he himself had been guilty of the waste or misappropriation.

Duties.—Every trustee is expected to devote time and attention to the protection and preservation of the trust estate as though it were his own property. The first duty of the newly appointed trustee is to make himself acquainted with the nature and extent of the trust fund, and to invest it, or see that it is already invested, in securities authorized either by the provisions of the trust instrument or by the general law. If any part of the fund consists of inscribed or registered securities, the trustees should lose no time in getting these transferred into their own joint names. Every investment which they make or retain must be of a kind contemplated by the trust deed or authorized by law for the investment of trust moneys: the former will, of course, depend on the provisions of each particular deed; as to the latter, expert advice is easily obtainable. In selecting investments, trustees should decide impartially between the conflicting interests of the tenant-for-

life, who is interested mainly in obtaining a large income, and of the reversioners, who are concerned chiefly with the preservation or augmentation of the capital. But above all let the trustee make quite certain that every investment which he makes is within the limits prescribed by his express or statutory powers: for unauthorized investments are the most frequent occasions of breaches of trust. If he intends to advance money upon mortgage, he must instruct a surveyor, acting quite independently of the borrower, to value the property ; the amount of the loan must not exceed two-thirds of the estimated value of the property ; and the surveyor must express an opinion favourable to the loan. Money should never be advanced by trustees upon the security of property likely by its nature to depreciate, or even fluctuate, in value ; for the permanence of the security has to be considered as well as its immediate sufficiency at the date of the advance.

No Profit or Charges.—Trustees must make no profit out of their trust: they cannot even charge for time and trouble expended in the conduct of the trust business, except in so far as they may be authorized by their trust deed or will to charge for professional services rendered. Apart from express authority, a trustee can charge only for expenses actually out of pocket. And what there is to be done must be done by the trustee himself ; for his office being one of personal confidence, its duties must be personally discharged. He may employ agents only when his trust deed or the universal practice of business men justifies him in doing so.

Breach of Trust.—When co-trustees have joined in committing a breach of trust, each of them is responsible for the whole of the loss incurred, but any one of them who repays the whole may call upon a co-trustee equally in fault with himself to contribute his share. If one trustee has been mainly instrumental in bringing about the breach of trust, and has derived a benefit from it which his co-trustees have

not derived, then he will be primarily liable. But if the trustee chiefly responsible has acted honestly and not from self-interested motives, and the others have simply done nothing, then they will all be liable together; for neglect of duty is quite as culpable as an error of judgement. It not infrequently happens that easy going trustees are misled or driven into a breach of trust by one of their beneficiaries with an eye to a high rate of interest or to some other advantage; and where a beneficiary has instigated a breach of trust or has requested trustees to commit it, or has given his consent to it in writing, the Court has power to take the whole of that beneficiary's interest in the trust fund and make it over to the trustees by way of indemnity for any loss they may have had to make good. If trustees commit two distinct breaches of trust, and the one produces gain while the other results in loss, they cannot set off the gain arising from the one against the loss occasioned by the other: the gain will go to augment the trust fund, whilst the loss must be made good by the unhappy trustees out of their own pockets.

Public Trustee.—In view of the fact that under the existing system a trust is apt to be extremely tiresome to the trustee when he is honest, and to the beneficiaries when he is not, it would seem probable that the tendency of the future will be in the direction of investing trusteeship with a more public and official character. Public Companies for the administration of trusts have already enjoyed some years of activity in the Colonies, and are not unknown in this country; and they are likely to extend their operations as testators and settlors grow more accustomed to the notion of paying a percentage on capital and income dealt with, by way of remuneration for the trouble involved. Another sign of the times is the Judicial Trustees Act, 1896. 'This Act was the outcome of the report, dated 5th May, 1895, of a special committee of the House of Commons appointed . . . "to inquire into the

liabilities to which persons are exposed under the present law as to the administration of trusts, and whether any future legislative provision might be made for securing adequate administration of trusts without the necessity of subjecting private trustees and executors to the risks which they now run." . . . The committee . . . reported that "a case has been made out in favour of the establishment of a system under which private trusts can be administered, if so desired, by and under the control of some official or judicial authority, which should also have the custody of funds".' They then considered several methods of giving effect to their proposal, ultimately recommending the creation of judicial trustees, or trustees appointed and controlled by the Court. A suggestion, discarded by the Committee, for establishing a 'public trustee' of the kind which already exists in certain Colonies has been carried out by the Public Trustee Act, 1906, which came into operation on January 1, 1908. The Public Trustee, as created by this statute, is a permanent official of the State, appointed by the Lord Chancellor; and he is authorized to act as trustee of private trusts, and to charge fees in respect of his duties. He is superior to the ordinary trustee in that he is a responsible and experienced official, whose whole business consists of the administration of trust estates; in that he never dies, or goes abroad, or becomes otherwise incapable of acting, whereby the inconvenience and expense of more or less frequent changes in the trusteeship are avoided; and in that the beneficiary injured by a breach of trust may look to the State for reimbursement, instead of being left to the possibly illusory remedy of proceedings against a trustee who may have absconded or become bankrupt. It would seem, however, that although the Public Trustee may be considered to be in some respects superior to the private trustee, the comparison is not wholly to his advantage. As the head of a department, he cannot be expected to devote to each individual trust committed to

him that personal care and attention which are expected of a private trustee, or to bring to the trust administration that personal knowledge of the circumstances upon which the private trustee is accustomed to act. As the business of the Office grows, more and more of the Public Trustee's duties will devolve upon his officers, and office routine will be substituted for personal discretion. Moreover, although the Public Trustee will not make away with the trust property by improvident or dishonest dealings therewith, as a private trustee might do, he will not, on the other hand, be likely to incur the personal risk to which private trustees often submit for the sake of carrying out some obviously desirable dereliction of their strict duty. A learned judge used to say that it was the main duty of a trustee to commit *judicious* breaches of trust. However judicious a proposed breach of trust may be, the Public Trustee will be bound to reflect that it involves a liability which may ultimately fall upon the funds of the State; and he can rarely, if ever, feel justified in departing from the strict letter of the law and of the trust instrument. Lastly, unlike the ordinary private trustee, he will charge capital fees, investment fees, and income fees; and, in addition to these, he will be entitled to be recouped all expenses of management in the usual way. These payments may be regarded as the insurance premium exacted for official integrity and State liability, but they make it appear improbable that economy of administration will be amongst the merits of the innovation introduced by the Public Trustee Act.

VII

TAXES, RATES, AND SERVING UPON JURIES

THE active duties imposed by law upon the citizen towards the State, with the exception of the duty of service upon juries, consist to-day of the payment of money in the shape of taxes or of rates. The householder is advised in the payment of these dues, not to rely solely upon the statement of the local collectors of rates and of taxes, in the faith that, after all, these collectors are impartial persons : excessive zeal in their service, or some other cause, not infrequently leads these servants of the public to make an over-estimate of the taxpayer's liability. The householder should remember, that in all cases it is for the authority demanding payment of a rate or tax from him, to be able to point out the statute under which such rate or tax is levied upon him : it is not for the taxpayer to show why he should not pay whatever a collector demands from him, but for the collector to show that his demands are lawfully founded. Express words of a statute are required to compel the citizen to pay money to the State. Bearing this principle in mind, it is now proposed to give a short account of the taxes and rates payable by the citizen, and the principles upon which they are assessed and levied.

§ 1. TAXES.

Moneys demanded by the Imperial Government and payable into the Imperial Exchequer are called Taxes; whereas the moneys demanded by local authorities for local purposes are called Rates. With indirect taxes, such as the customs duties payable on importation of goods into the

United Kingdom, this work is not concerned. The taxes which affect the average householder in his daily life may be enumerated as follows:—Income Tax, Land Tax, Inhabited House Duty, and a multifarious collection of taxes of a sumptuary kind known as Excise Licences.

Taxes on the House—Income Tax, Schedule A.—Under the name of Income Tax the State levies a tax on the profits of all the descriptions of property included in the Income Tax Acts. The profits taxable under these Acts fall into five classes or schedules, Schedules A, B, C, D, and E. The four last schedules will be considered later. For purposes of convenience it is proposed at present to consider only Schedule A, inasmuch as it is a tax which has to be paid, though not borne, by every occupier of a house of over £10 annual value. Schedule A imposes a tax (commonly called Landlord's Property Tax) on the annual profits of land in the United Kingdom, and the tax in its ultimate incidence falls only upon the owner of landed property; but inasmuch as it is collected in the first instance from the occupier of the land, it is necessary for the householder to understand something of its nature. If the householder is living in his own house, then of course he bears as well as pays this tax; if, on the other hand, he is only a tenant of the house, then he must in the first instance pay this tax to the collector, and should deduct the amount so paid from the next payment of rent by him. No contract to shift the burden of this tax from the landlord to the tenant is of any avail, and any agreement by which the tenant purports to bind himself to bear it, is void. The tenant should, however, remember to deduct the tax paid from his next payment of rent, as, if he omits to do so, he is not entitled to deduct it from a subsequent payment of rent; and he must always bear in mind that, although it is intended that the tax should ultimately fall upon the landlord, the occupier is, in the first instance, liable, and if he omits to pay it a distress

may be levied on his home. To householders living in their own house or owning other landed property, a knowledge of the method in which the amount of the tax is arrived at is useful. The tax is payable upon the annual value of the lands or houses. Where these are let at the full or rack rent there is, of course, no difficulty in estimating the annual value; but where they are not so let the Commissioners of Income Tax estimate it. An appeal may be made to them by any person aggrieved by the assessment. Outside the metropolis the practice recently has been to make a new assessment once only every five years: inside the metropolis the annual value is the *gross* annual value appearing on the valuation list (the nature of which is explained below under the title of Rates[1]), and this valuation list is also quinquennial. The landlord is entitled, when he pays the rates and does the repairs, to deduct from the amount on which he pays tax the rates and an amount not exceeding one-sixth to represent repairs. He also may be entitled to a certain deduction on account of repairs, in no case exceeding one-sixth of the assessment, when the tenant is responsible for the repairs. He is further entitled to deduct the amount paid for Land Tax. Where a house is empty for the whole or part of the year of the assessment the owner may apply to the Commissioners, and get the assessment discharged, and the amount paid or a proportion of it refunded. Appeals to the Commissioners, which are not, as a general rule, matters of technical difficulty, are dealt with later under the other branches of Income Tax, and the remarks and observations there made apply generally here.[2] This tax being a branch of Income Tax, the usual exemptions and abatements exist, that is to say, if the person ultimately paying the tax has an income under £160 he is wholly exempt and can obtain a repayment of any amount that may have been paid on account of the tax; similarly, if he has an income under £700 he is entitled to certain abatements. The

[1] See p. 219.

[2] See pp. 213–14.

amount of tax actually levied upon the annual value of the property as Income Tax varies from year to year. It is probable that a person holding land as an emolument of his office, for instance, a vicar holding the vicarage and the glebe, is entitled to pay Income Tax in respect of it as for 'earned'[1] income, if he is otherwise qualified for the reduction relating to such incomes, but at the time of writing the Finance Act of 1907 has not on this point been the subject of judicial interpretation.

Taxes on the House—Inhabited House Duty.—This is a tax payable by the occupier of an inhabited house. If a house is not slept in, it is not considered an inhabited house; and a house not otherwise slept in does not become inhabited merely because a caretaker sleeps there to take care of it. Caretakers bringing their families on to the premises to live and sleep there should, however, be avoided, as they have been known to render a house otherwise uninhabited liable to Inhabited House Duty. Thus premises which are used solely for the purposes of business, or dwelling-houses bona fide quitted and unoccupied, are not liable to this taxation, and do not become so merely because a caretaker sleeps there at night to look after them. But the householder must not imagine from the above that he is entitled to exemption, either in whole or in part, merely because he is accustomed to shut up his house and go away for a certain part of the year, leaving his furniture behind him. Indeed, if the householder desires to shut up his house for a year or more, it will be better, partly to make no doubt about escaping this tax, but more particularly in order to escape rates, which will be dealt with hereafter,[2] to store his furniture and let the caretaker, if one is required, remain in the unfurnished house. This tax is payable on the annual value of the house, which is ascertained both inside and outside the metropolis in the same manner as it is for Schedule A of the Income Tax,

[1] See p. 212.

[2] See pp. 215–21.

and there is a right of appeal against the assessment to the same persons. The rate of duty on ordinary private dwelling-houses is as follows:—

Annual value under £20, no duty.

Annual value exceeding £20 and not exceeding £40, 3*d.* in the £.

Annual value exceeding £40 and not exceeding £60, 6*d.* in the £.

Annual value exceeding £60, 9*d.* in the £.

There is a lower scale of duty for houses liable to the duty but used as shops, hotels, public-houses, coffee-houses, farm-houses, and lodging-houses, the last-named requiring to be registered as such. In estimating the annual value the household and other offices, yards, gardens, and pleasure grounds not more than an acre in extent, belonging to, and occupied with the house are included—and if premises used by the occupier for his profession or business are structurally connected with the house they are also included. The tax, as has been said, is in general paid by the occupier, but where the house is let in separate flats and tenements it is payable by the landlord with a right of distress in default of payment against the occupier. As between landlord and tenant the ultimate incidence of the tax may be regulated by agreement.

Taxes on the House—Land Tax.—This ancient tax concludes the list of those falling upon the householder in respect of his occupation of the house; and many householders may not have to pay it, inasmuch as the land on which their house stands may have had the Land Tax upon it redeemed. This tax was in the year 1798 made perpetual; and shortly its scheme was this. The country was parcelled into divisions, and every division had to pay towards the entire amount required a certain quota. This quota each division divided among its separate parishes or districts, and each parish raised the quota required from it by a rate upon the annual value of the land in it. The quotas payable by each division and

each parish, are those first fixed under the Act of 1798; and inasmuch as the proportionate value of the land in the different divisions and different parishes at the present day, is very different in many cases from the proportionate value of the same land, in the same divisions and parishes in 1798, it is clear that the tax must fall with considerable inequality. The hardship is now lessened by an enactment reducing in all cases the amount payable for Land Tax, to one shilling in the pound on the yearly value of the land; but in many places, especially industrial towns of very modern origin, the amount will be very much less, and in some of these it is believed to be as little as a farthing in the pound.

One of the objects of making the Land Tax perpetual, was to induce persons to redeem it, and so obtain a lump sum for the Exchequer. When the Land Tax on any land is redeemed, the proportion payable by the parish and division in which it lies, is proportionately reduced. The tax is redeemable for an amount equal to thirty times the amount of the tax which it is desired to redeem: and the redemption may be made in a limited number of instalments, or in a lump sum. The owner of land should not fail to redeem the tax before he improves his land to any great degree, as for instance by building upon it: otherwise he will have to pay Land Tax in respect of land of a higher annual value, and any subsequent redemption of Land Tax will become much more costly. Similarly, when buying land it should always be ascertained whether or not this tax has been redeemed. In determining the annual value of the land, the valuation made for the purposes of the poor rate is generally taken as the basis for the assessment. There is an appeal to the Commissioners for Land Tax against an assessment.

This tax, like the others already mentioned, falls in the first instance upon the occupier: but unless he has agreed to pay it—and an agreement to pay 'all taxes' would include Land Tax—he may deduct it from his next and only his next rent.

In default of agreement between landlord and tenant to the contrary, it is the scheme of the tax that it should ultimately fall upon the beneficial ownership of the land. Thus where the premises are let at a full or rack rent the landlord will, in default of agreement, pay the whole: where they are let at less than the rack rent the tenant will pay a proportionate part of it. A person with an income of or under £160 a year is exempt from Land Tax: and a person with an income not exceeding £400 a year is entitled to an abatement. Persons entitled to exemption or abatement, should make their claim before payment of the tax: unlike Income Tax, Land Tax once paid cannot be repaid.

Income Tax—Schedules B, C, D, and E.—The taxes levied under these four schedules of the Income Tax Acts, and more particularly under the last two of them, constitute the tax which is popularly called Income Tax, although, strictly speaking, Schedule A, which has been already dealt with, is equally a branch of Income Tax. The taxpayer should bear in mind that the word 'Income' for the purposes of Income Tax is a word of art, and that it is his duty to pay tax every year, not on all the money that comes in to him that year, but upon a sum which has to be ascertained according to certain rules laid down in the Income Tax Acts, although such sum seldom, if ever, is his actual income for that year. Again, the Income Tax Acts, by dividing the different kinds of profits into different schedules, lay down different rules for calculating different kinds of profits: and if a citizen is so fortunate as to receive a sum of money which is not included in any of the schedules he is not bound to pay tax upon it. As stated before, it is for the Crown to point to the enactment under which tax can be claimed. Thus if a person receives a legacy in any year, this is not the subject of Income Tax; nor would the profit made from a casual and isolated sale of stock or shares be liable to Income Tax; neither would a person who is not in the habit of being an author

have to pay Income Tax upon a few stray guineas received from a single and isolated contribution to a magazine. On the other hand, the professional speculator or author would of course have to pay: the test is whether or not the person in question makes or attempts to make these profits sufficiently often to enable it to be held that he makes a business of it. These instances are given in order to draw attention to the fact that the taxpayer must, in reckoning his liability to pay tax on his income, never consider his income in a loose or popular sense, but pay strict attention to the rules laid down by the Legislature for calculating it.

Schedule B.—The first two schedules under consideration here, B and C, may be dismissed shortly. Under Schedule B, Parliament has laid down the rules under which a farmer is, for the purposes of taxation, to calculate the income or profits derived by him from the occupation of his farm. Shortly, the profits of the farmer are deemed to be one-third of the annual value of the farm, and the annual value is ascertained generally in accordance with the rules applicable to Schedule A, which have been already described. Schedule B, being the method employed for estimating the profits of the farmer as a farmer, is of course a distinct tax from Schedule A, which is a tax on the profits of ownership of land, and therefore if the farmer owns as well as occupies his land he has to pay tax both under Schedules A and B. A farmer may, if he prefer, which he very seldom does, be assessed under Schedule D.[1] Whether assessed under Schedules D or B, farmer's profits are entitled to the relief given by the Finance Act of 1907 to earned incomes [2] and to the usual exemption and abatements allowed to small incomes. If he is assessed under Schedule B, the farmer's income from the farm is assumed for this purpose also to be one-third of the rent, e. g. a farmer paying £480 per annum rent for his farm will be assumed to be deriving only £160 of income from it.

[1] See pp. 207–11. [2] See p. 212.

Schedule C.—Under this schedule Income Tax is deducted from interest, annuities, and dividends payable to any person by the person or company liable to pay the same. Inasmuch as the Income Tax is, under this schedule, deducted before the dividends or other payments are received by the taxpayer, he need not in the case of home securities concern himself with declaring his income under this schedule, unless he desires to obtain the exemptions granted to persons of small incomes, in which case he will have to include this class of income in his statement of his total income. If his income is under £160 or under £700 the taxpayer should apply to the surveyor for forms to claim exemption or abatement, as the case may be, and repayment of the tax overpaid. It will be found that considerable formalities are put in the taxpayer's way in the case of his first claim for return of tax, but that, once he has established his right to exemption or abatement, subsequent claims go through more easily. The claim should be made as soon as possible, but three years' arrears may be claimed. In the case of dividends or interest from foreign securities Income Tax is not, unless some person in England is entrusted with the payment of them, deducted at the source, and such profits should generally be declared under Schedule D.

Schedule D.—Under this important schedule, the citizen has to declare, and pay tax, upon his income arising from his profession, trade, employment, or vocation. The reader is reminded of the remarks made above[1] with regard to stray profits not connected with his trade or profession. In calculating the profits made from his trade or profession the taxpayer must make an average of the profits arising therefrom during the three years preceding the year of assessment; and this and not his profits of the year of assessment is the income which he declares and upon which he pays Income Tax. The 'year of assessment' is of course the year in

[1] See pp. 205-6.

respect of which the taxpayer is making his declaration. There is always to be found, at the top of the form on which he has to make his return, a statement of which year that is. Where the business or profession has been commenced within the period of three years the computation for the year must be made on the average of the profits from the period of first setting up the same; and where it has been commenced within the year of assessment the taxpayer must state the profits made since the commencement of setting up the business. In order to arrive at what his profits for a year have been, the taxpayer will of course arrive at the amount by setting against the receipts the expenditure necessary to earn them. It must be remembered that the taxpayer may not make any deduction for his household expenses, or the expenses necessary for maintaining himself and his family; and several other deductions are forbidden, which will be found upon the forms supplied by the Inland Revenue for the return of his income. Where a person, for instance a doctor, uses his dwelling-house partly for the purposes of his trade or profession, he may deduct a portion not exceeding two-thirds of the rent of the house from his profits; lesser deductions, not exceeding one-eighth of the rent, may be made by a clergyman or religious minister paying rent for his dwelling-house, and using any part of it mainly for his duties. In the case of an office taken wholly for the purposes of the business, of course the whole of the rent of it may be deducted. The tax under this schedule is payable upon all trades, businesses, or professions carried on in the United Kingdom, whether the person carrying them on is resident in the United Kingdom or not. It is also payable by a person residing in the United Kingdom when he receives profits from business carried on entirely abroad, but in such a case the only profits of the business that are assessable are those which are remitted to and received by him in England: but if a person carries on or directs a business from England he will

have to pay tax on the whole of its profits even though the operations of that business are carried out abroad. When a person's income is in fact less in the year of assessment than the statutory income returned by him from the average of three preceding years, he can in the case of a new business obtain relief so as to pay only upon his actual income; the cases in which this right of relief arises and the methods of obtaining relief, appear upon the form sent to taxpayers, and need not be explained here. Every person upon whom a return form is served, must now make a return, whether he has taxable income or not.

Two more points of domestic interest on this tax remain. The first is that life insurance is the only form of saving recognized by the State in giving exemption to Income Tax; the taxpayer may deduct from the amount of assessment for the purpose of lessening the amount for tax, though not for the purpose of lowering the income in order to obtain exemptions,[1] the amounts paid by him in the year for premiums on an insurance policy on the life of himself or his wife, or for a deferred annuity on the same lives, provided that the amount of the premium so deducted does not exceed one-sixth of the whole of the taxable income. The other point to be noticed is, that for some or no reason, the Income Tax Acts cause the tax in the case of small incomes, to fall more heavily upon married persons living together, than upon unmarried persons or married persons living apart. Except in certain cases[2] the income of the wife, though now entirely separate under the general law from the husband's, is counted as his income for the purposes of tax; so that in a case, for instance, where husband and wife each have an income of £400 a year, the husband will have to pay tax on an income of £800 a year without any abatement; whereas had they not gone through the ceremony of marriage with each other they would each

[1] See *post*, pp. 211–12.

[2] See *post*, p. 212.

have paid tax only upon £240, that is to say, upon a total of £480.

Under Schedule D, the taxpayer should also return and pay tax upon all interests of money and dividends, from which tax has not been already deducted. Dividends received from foreign companies which have not made the deduction under Schedule C, will be returnable under this schedule. Profits arising from foreign or colonial securities, should be returned at the amount in fact received in the current year; profits arising from colonial and foreign possessions—for instance, an interest in a foreign partnership or rents from foreign lands—upon the average of the three years preceding the year of assessment. Again, interest on deposit accounts at a bank, if tax has not been deducted, are taxable under this schedule. Generally speaking, it should be remembered that where a person is bound, by contract or otherwise, to make a yearly payment of interest or of an annuity to another, whether payable yearly or half-yearly or at shorter periods, it is the duty of the person paying, to deduct the amount of tax payable upon such interest. The person paying the interest does not deduct from his return of his own profits the interest so payable, but he returns his whole profits as though he had not to pay this interest, and retains the amount deducted on account of tax, out of the interest payable by him; if he pays such interest (as a private person almost invariably will do) out of profits brought into charge to the tax, he is entitled to retain the tax so deducted for his own use: in other cases the amount so deducted is a debt to the Crown. The recipient of the interest is bound to allow the deduction for tax. The last division of this schedule brings into tax any annual profits or gains not already included in the schedule, and not charged by virtue of any of the other schedules. Attention is directed to the limitation on the profits imposed by the word 'annual', and the provision 'not charged by virtue of any of the other schedules'; and the

reader is reminded of the general observations made above under the marginal heading Schedules B, C, D, and E.

Schedule E.—Under this schedule are taxed the salaries of all public servants, for instance, civil servants, officers in the army and navy, judges; of persons holding offices or employment of profit under any ecclesiastical body, whether aggregate or sole, thus including all ranks of the clergy; of all servants of public corporations and the servants of any company or society, whether incorporated or not. In returning the salaries all profits, fees, and perquisites accruing by reason of the office must be included; thus Easter offerings received by a clergyman, though freewill gifts, have been held to come within this schedule. To be taxable, however, the perquisites must be in money or easily convertible into mone Thus a bank manager who is allowed by the bank to rent-free over the bank, need not include in his return o tax on such a sum as would have been the rent for his q if they had been let to him at a rent. The amount under this schedule may be estimated either upon th of the preceding year, or upon the average of the thr ing years. The tax on salaries under this sched stopped by the corporation or department payi the taxpayer should see to it that he is not c pay twice. The only expenses which may be the amount for tax, are those that the taxpay obliged to incur in the performance of his du deduction allowed in some cases to minist respect of their house rent has been notic D.[1] This schedule (E) imposes the tax u and upon all employments *within* Great

Exemptions and Abatements.—The tax having been reviewed, notice m exemptions and abatements genera as a whole. Incomes under £160 ; or if there is any question

[1] See *ante*, p. who may appear, or brief

there is a varying scale of abatements on incomes up to £700. This scale will be found upon the return sheet sent to the taxpayer. Mention has already been made of the hardship upon married couples of small means arising from the fact that the combined income of the husband and wife is for the purposes of exemptions and abatements treated as that of one person. There is one case in which this hardship is mitigated. Where the total joint income of husband and wife does not exceed £500 and includes profits made by the wife from her personal labour, and the rest or a part of the rest of the total income arises from the husband's personal labour unconnected with the business of the wife, the claims of the husband and wife for exemption or abatement are to be treated as separate claims in respect of separate incomes. Under the Act of 1907 a new abatement has been made in respect of earned incomes where the total income of the taxpayer does not exceed £2,000. In such cases the taxpayer is (1908–9) entitled to pay a tax of ninepence on such part of the income as is earned, as against the present tax at other incomes of one shilling. The statutory definition pa earned' will be found upon the forms, and little can be at own it added to it. Incomes under Schedules B and E, and profits from professions and trades under Schedule D, are the amo earned incomes.[1] The income of a partner may, payable urpose of any exemption or abatement, be treated almost y from the income of his firm.

to the ta obtain the abatement relating to earned incomes, own use: in ot er abatements and exemptions, it is necessary the Crown. The r make a declaration of all his income from deduction for tax r. The information, which will thus be into tax any annua missioners, of the declarant's means, the schedule, and not c red persons entitled from claiming schedules. Attention is as the Commissioners are local profits imposed by the w declarant's competitors in business, charged by virtue of any as to Schedule A.

there is no doubt that it may sometimes be wiser not to claim it.

Appeals.—Appeals may be made to the general Commissioners against any assessment for income tax. These, as has been just mentioned, are generally respectable local men. If it is desired to avoid going before these gentlemen on an assessment under Schedule D, the taxpayer may by special notice in his appeal, require his appeal to be heard by the Commissioners for special purposes. These gentlemen sit in London generally, and at any rate are not local men; the taxpayer thus avoids having to disclose his private affairs to the people to whom, as a rule, he would most wish to avoid having to do so.

When a surveyor of taxes thinks that a taxpayer has not returned a sufficient sum as his income, he has no power directly to require the latter to produce his books. Instead, he causes an additional assessment to be made upon the taxpayer, and the practice is in this additional assessment to assess the taxpayer at a sum well beyond what there is any likelihood that his income is. This casts upon the taxpayer the burden of appealing against this assessment, and of upsetting the figures appearing in the additional assessment. To do this he must produce his books and accounts. He must, within ten days of the notice of assessment, give notice to his surveyor of his intention to appeal, and state the grounds of his appeal. This he may do quite generally; and there is no power to compel him to enter into particulars. The following form will cover pretty nearly all cases: 'Take notice that I intend to appeal against this assessment No. ; and that the grounds of my appeal are that the said assessment is excessive and bad in law. And take notice, that I require this appeal to be heard before the Commissioners for special purposes.' If there is only a question of figures, the taxpayer can usually trust himself to conduct his appeal; or if there is any question of principle, consult a solicitor, who may appear, or brief

counsel to appear before the Commissioners. The Commissioners have power to state a case for the High Court upon a point of law. Penalties are attached to a person omitting to make a return or fraudulently sending in a false return. Errors or omissions in a return already made may be rectified by the taxpayer, and if this is done on his own initiative no penalty can be levied on him. Penalties may be recovered in the High Court or before the Commissioners.

Excise Licences.—Under this name are collected the taxes shortly known as gun licences, game licences, taxes on male servants, motor cars, armorial bearings, dog licences, carriage licences. On these there is only one general remark to make, and that is, that they are personal to the person taking them, and not attached to the thing for which the licence is taken out. Thus, one dog licence entitles the holder to have a succession of dogs, provided he have not more than one at a time, and so of all the other of these licences. These licences can be obtained at a Post Office, where all information is given. As soon as a person requires a licence, for instance buys a dog or a motor car, he should obtain the licence at the Post Office. Licences for dogs, male servants, motor cars, carriages, and armorial bearings are annual, and should be renewed every January 1st. Licences for guns date from July 31st, and are also annual. Licences to kill game can be taken out for varying periods, and vary as to the amount payable according to the time for which they are required.

The principal taxes which affect the householder in his daily life have now been reviewed. No mention has been made of any of the various kinds of death duties payable on the estates of deceased persons. This has been done advisedly. The layman will never find it really worth while to wind up the estate of a deceased person without the aid of a solicitor; and it will be the solicitor's business to advise him with regard to these last-mentioned duties.

§ 2. Rates.

The term 'rates' is usually applied to the levies imposed on occupiers of land and houses by local authorities for public local purposes because they are imposed at such and such a 'rate in the pound'. Rates are levied for the maintenance of the poor, highways, lighting, paving, drainage, education, and for many other purposes. Two points concern the average householder; first, that the rates in his district generally are not too high; secondly, that he does not himself pay more than his proper proportion.

Rating Bodies.—The first of these points cannot be raised by the householder upon an application for payment of rates from him. He must interest himself in the election of persons to local bodies, and do his utmost thereby to promote honesty and economy in local administration. The rating authorities in the country are now numerous, and for present purposes it is sufficient to draw attention to two of these bodies. The one is the guardians of the poor, who are responsible for the poor rate; the other is the body who is responsible for the sanitary or general district rate. As to the guardians of the poor, these are elected separately in urban districts; in rural districts the persons elected for rural district councillors serve also as guardians. Attention is directed to these elections and to the conduct of the guardians in urban and rural districts respectively. With regard to the sanitary or general district rate, a distinction is to be noticed between urban and rural districts. Generally speaking, urban authorities have very much wider powers of spending money than rural authorities, and this rate is therefore usually a good deal heavier in urban than in rural districts. Rural authorities levy a highway rate and may levy a rate for special purposes which is of a similar character to the general district rate in urban districts. The authorities who levy this sanitary rate are—in boroughs, the borough council acting as sanitary

authorities; in urban districts, which are not boroughs, the urban district council; in rural districts, the rural district council. The householder will therefore be well advised to attend to the elections and proceedings of these bodies. It should be remembered that it disqualifies a person from being elected to, or acting on a local body, if he is interested in a contract with that body. Vigilance associations of ratepayers are often formed to watch the proceedings of local bodies, and secure the election of one or more trusted persons to the body in question; and there is no doubt that such associations have a most wholesome effect. The character, and more particularly the trades and professions, of persons standing as candidates for election to local authorities, should be carefully considered by the ratepayer when giving his vote, and he should weigh the desirability of electing persons whose personal interests as builders, contractors, and owners of building land might tend to conflict with their impartiality in performing their public duties.

Liability to Pay Rates.—With regard to his more immediately personal interests, every householder is interested in seeing that he does not pay more than his fair proportion to the rates levied in his district. To secure this it is his business to see that his house is assessed at its proper figure in the valuation list. This list contains all the property which is liable to contribute to the local rates, and is the standard upon which the liability to all these rates is based. It is therefore important to see who is liable to be placed upon this list, and how the amount of liability of persons placed upon it is arrived at.

Every occupier of land is liable to be rated, and thus to be placed upon the valuation list. Not only occupiers of houses, but occupiers of shooting rights, telegraph poles, tramway lines —all who occupy land in any way are rateable. It is occupation, not ownership, that is rateable. An empty unoccupied house therefore is not rateable; and putting in a caretaker

merely to look after it will not make it so; a house ready for immediate occupation and used for storing furniture is considered as occupied; business premises, although not slept in, are also occupied. As between owner and occupier, the burden of the rate may be regulated by agreement. But no agreement between them affects the rights of the local authority against the occupier; and if the rates are not paid, the goods of the occupier always remain liable to distress. It should be mentioned that the foregoing remarks apply only to hereditaments of over £20 annual value; slightly different rules apply to those of a lesser value.

One further point with regard to occupation must be considered, namely, who is to be considered the occupier. In the case of an ordinary householder living in a house furnished and owned or rented by him, there is no difficulty in answering this question. If a man lets part of the house in which he lives as lodgings, retaining control, he is assessed for the whole house. Similarly, an ordinary householder cannot escape liability for being assessed for his whole house, by shutting up, and not occupying part of it. In the case of buildings let in separate flats or tenements, a separate assessment will be made upon each flat; but it is the practice of landlords of flats to arrange to pay the rates, so that tenants of this class of property, beyond the fact that they have to pay higher rents, hear nothing about their rates. If a house is let furnished, the person letting it furnished is assessed; and the occupier of any house which has been let to him for a period not exceeding three months may deduct from his rent the amount of any rates which he has had to pay. With regard to outgoing and incoming tenants, each is liable proportionately to the length of their occupation during the period for which the rate has been made.

Assessment.—The householder thus being liable for rates by reason of his occupation of his house and land, the next point for him to see is, that he is paying his proper proportion.

Rates will be levied upon him at so much in the pound of the annual value of the fixed property occupied by him; and this annual value is fixed by the amount shown in the valuation list. This list contains two values for every hereditament—the gross value and the rateable value. It is on this list that the amount of the ratepayer's liability to every rate depends; and in the metropolis the gross value is also the standard of liability for Income Tax, Schedule A, and Inhabited House Duty. It is therefore of the utmost importance to the householder to see that he is not over-assessed. It is proposed in the following remarks to state the principles on which the house should be assessed, and to sketch the procedure that should be followed by a householder who desires to appeal. The procedure on rating appeals is highly technical and difficult, and differs in the provinces and the metropolis; and it is not proposed to describe the procedure beyond the point to which a layman may safely, and then only if it is a mere question of figures and not of law or principle, proceed without professional assistance. It is worth the while of the householder to be familiar, to the extent hereinafter given, with rating questions, inasmuch as an over-assessed householder very frequently succeeds before the first tribunal of appeal, to which the two following paragraphs will be sufficient to guide him. Unless expressly stated to the contrary, the following remarks apply both to the provinces and the metropolis.

The observant will notice from time to time that there is posted upon the doors of the parish church a notice that the valuation list for the parish has been deposited for public inspection. He should acquaint himself with the contents of it. If he finds that his house has been assessed too highly he should serve a notice of objection thereto, stating generally[1] the grounds upon which he relies. The service of this notice is absolutely essential to any right of appeal. He must, within the metropolis, give this notice within twenty-five days of the

[1] See Notice of Appeal against Income Tax Assessments, *ante*, p. 213.

deposit of the list, and give notice to the assessment committee and to the overseers. Outside the metropolis he should give the notice of objection within twenty-eight days after *notice* of the deposit of the list (i. e. after the notice has been published on the church), and he may, though it is not advisable, give the notice later: in this case also the notice should be given to the overseers and the assessment committee.

In the valuation list the ratepayer will find that two values have been set against his house, the gross value and the rateable value. He should satisfy himself that both of these are in his case proper and fair. The gross value means 'the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenants' rates and taxes and tithe commutation rent-charge, if any, and the landlord undertook to bear the cost of repairs and insurance and other expenses, if any, necessary to maintain the hereditament in a state to command that rent'.

Rateable value means 'the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid'.

The extracts above given are taken from the statutes governing the metropolis, but they are of general application. The rent which is to be discovered is what an imaginary tenant from year to year would give for the premises. The rent actually paid, therefore, by a weekly tenant or a tenant for a long term of years obviously is not conclusive of what a yearly tenant would give: neither is the rent actually paid by a yearly tenant in occupation necessarily conclusive, as special considerations may have influenced the terms of the particular tenancy. It will be observed that the grounds on which objection may be taken to the valuation of the gross value and the rateable value will differ: if the ratepayer's objection is fundamentally to the gross value, he had better give notice of objection to both.

The ratepayer or his solicitor or counsel must appear before the assessment committee, which consists of local men, to support his objection. If he objects to the gross value, let him be ready with evidence of the value of his house, and of the general values of property in the neighbourhood, and let him be prepared to produce his tenancy agreement. If he has grounds for saying that his house is inferior to similar houses in the neighbourhood—for instance, has no bath-room or has not got electric light or is badly built—let him give evidence of it. If his objection is that an insufficient allowance has been made for repairs and other expenses, let him be prepared with evidence on this point. An appeal lies from the assessment committee to special or quarter sessions, of which the latter is generally preferable, but at this point the householder should, if he desires to appeal further, consult his solicitor. On the appeal to sessions, the appellant will be limited to the grounds of appeal given in his notice of objection, so that if it is his intention to carry his appeal beyond the assessment committee, it is advisable for him to take advice in drawing his notice of the objection. In the provinces the valuation list is drawn up from time to time as occasion requires; in the metropolis it is quinquennial. Supplemental lists may be drawn up from time to time to deal, for instance, with cases of new property becoming rateable or increases in values.

Payment of rates is enforced by distress on the goods of the occupier, and in default of distress by imprisonment. Application is made to a magistrate for a distress warrant. On the hearing of this application the ratepayer cannot be heard to contend that he is over-assessed or that the rates are too high or are unjust. He is limited to points which contest the jurisdiction of the magistrate to grant the warrant—for instance, that the property is not in the parish, or that the person rated is not the occupier.

It may be mentioned that the occupier of agricultural land and the owner of tithe rent-charges attached to a benefice, are liable to pay only one-half of the ordinary rates imposed in respect of them. Special abatements are also made in the assessment for the sanitary rate of tithes, arable and meadow ground, woodlands, market gardens and nursery grounds, and lands covered with water. No mention has been made of water-rates. These are rather in the nature of charges for goods supplied than rates proper; and the method of charge varies in different places according to the terms of the various local Acts of Parliament regulating the various local undertakings.

§ 3. Jury Service.

Liability to Serve.—The interest of the householder on this subject is generally confined to seeing how far he can avoid serving at all. There are two principal kinds of juries—grand juries and petty juries. Service on the grand jury is confined in a county to leading men of the county, and they ought to be freeholders in the county; in boroughs with quarter sessions of their own the grand jury must be burgesses. The average householder is not likely to be troubled with service on these juries. For service on petty juries the general qualification is that the citizen is under sixty and over twenty-one years of age. With regard to petty juries there are the following further qualifications. For service on a special jury the citizen must either be legally entitled to be called an esquire, or be a person of higher degree, or be a banker or merchant, or be assessed in respect of his private dwelling-house to the poor rate or inhabited house duty at a value in a town of 20,000 inhabitants or upwards, at £100 or more, or at a value elsewhere of not less £50; or he must occupy premises, other than as his private dwelling-house, assessed at not less than £100, or if a farm not less than £300. To be qualified to serve on a common jury, the citizen must be a resident house-

holder assessed in Middlesex at not less than £30, or elsewhere at not less than £20. City of London jurors must be occupiers of fixed property in the City, and have estate of the value of £100. Coroner's jurymen need only be householders.

The following persons are exempt from service—peers, members of Parliament, judges, practising lawyers and solicitors, managing clerks, officers of courts of justice and of the Houses of Parliament, practising members of the Royal College of Physicians, practising members of the Royal College of Surgeons, registered medical practitioners, apothecaries and chemists, army and navy officers while on full pay, the royal household, the masters, wardens, and brethren of the Trinity House, and members of the Mersey Docks and Harbour Board, servants of the Post Office and the Customs Service, and the Commissioners of Inland Revenue, and subordinate officers in the Inland Revenue, coroners, jailers, keepers of lunatic asylums, and ministers of religion. Further, any person who has been summoned to serve on a jury in any one year is exempt for the rest of the year from serving again, unless all the jurymen upon the list become similarly exempt. Persons summoned to and attending as jurymen at the High Court, Assizes, or Quarter Sessions are advised to apply for certificates of such attendance in order to make sure of obtaining future exemption, and also because in some counties the exemption is for a considerably longer period than one year. The application for a certificate should be made to the sheriff if the jury to which he was summoned was at the High Court or Assizes, and to the Clerk of the Peace if the jury was at Quarter Sessions. Persons serving in the Territorial Army are exempt from the duty of serving upon juries.

The names of the persons liable to serve upon juries are taken from a book known as 'The Juror's Book', and it is to the making up of this book that persons who are not liable to serve should pay attention. On the first three Sundays in

September there will be found posted on the church doors a list of persons liable to serve, together with a notice stating that at a specified time and place a meeting of Justices of the Peace will be held to hear all objections to the list. Persons who find themselves upon the list when they are entitled not to serve should attend at this meeting and get their names removed. If a person thus entitled omits to do this and is subsequently summoned to a jury he will have to attend at the court to which he is summoned, and may then apply to be excused; but he will find that this latter course involves him in much more trouble, and is strongly advised to attend to the making up of the juror's book instead.

Persons summoned to serve on a jury but not attending are fined. If upon receipt of the summons their health is such that attendance is out of the question, they should forthwith send a medical certificate to the sheriff or other the officer named upon the summons to receive any such intimation. If this is not done and a fine is inflicted upon the juryman for non-attendance, fourteen days are allowed to elapse before it is enforced, during which time the juryman may make an affidavit containing his excuse (if any) to the officer of the court; and if the excuse is valid the fine will be remitted by the judge. To avoid the public inconvenience that might result from omissions to attend, more jurymen are summoned than are required, and those that are not required are dismissed.

Duties of Jurymen.—With regard to the duties of jurymen, it may seem impertinence in the writer to say anything, inasmuch as juries exist to check the pedantry of lawyers. But the following remarks may be forgiven. In the first place the function of the jury is to listen. They should not express opinions, or ask questions. If a question has not been asked which really appears material, the judge should be asked to put it to the witness, the juryman should not put it himself. Jurymen should not enter into a discussion with, or ask any question relating to the case of, the officer of the

court, or of the police. They should avoid coming to any conclusion until the very last word of the evidence has been given. In civil cases they should avoid a natural bias in favour of the plaintiff. They should not assume that because the plaintiff has taken the trouble and incurred the expense to come into court, therefore there must be something in his case. There are many other explanations of litigation. The fact that one party is poor and the other rich must not be allowed to affect the judgement one iota. Neither pity nor resentment should be allowed to inflame the damages awarded: verdicts thus inflamed may be set aside. The question of costs must not be considered by them: that is for the judge, not the jury. In criminal cases they should remember that the law of England assumes a man innocent until he is proved guilty. The jury will be told this at the trial: but it is not so easy to remember it as it should be remembered, whilst the prisoner occupies an invidious position in the court, and stands guarded by warders. They must not let the existence of appeal courts lessen their sense of responsibility. Verdicts of juries have a peculiar sanctity in courts of appeal. The evidence of a policeman or other official should receive the same weight as that of any other witness and no more. Lastly, let the jury remember that upon their judgement and courage depend ultimately the liberties and good sense of the community. Of facts the jury are the sole judges, and they may disregard a judge who attempts to invade this their province. If they are asked by the judge to return answers to certain particular questions put by him they should note them carefully and, if they will, answer them. But it is the law of England that a jury may, without answering the questions, return a general verdict for the plaintiff or defendant; and so long as there is reasonable evidence to support it, such a verdict will not be set aside.

Oxford: Printed at the Clarendon Press by HORACE HART, M.A.

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